

MONTANA LEGISLATIVE HISTORY

Chapter 468 19 91

Bill H 377 S _____ Original bill & history x c

H. Committee on NATURAL RESOURCES S. Committee on NATURAL RESOURCES

Hearing Date(s) 2/1 x c

Hearing Date(s) 3/13 x c

EXEC. ACTION 2/11 x c

EXEC ACTION 4/1 x c

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Date Out _____ c

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

BY REQUEST OF BOARD OF PUBLIC EMPLOYEES'
RETIREMENT

1/23	INTRODUCED		
1/23	REFERRED TO STATE ADMINISTRATION		
1/23	FIRST READING		
1/31	HEARING		
1/31	COMMITTEE REPORT—BILL PASSED		
2/02	2ND READING PASSED	98	0
2/05	3RD READING PASSED	99	0
2/06	TRANSMITTED TO SENATE		
2/06	FIRST READING		
2/06	REFERRED TO STATE ADMINISTRATION		
2/12	HEARING		
2/12	COMMITTEE REPORT—BILL CONCURRED		
2/14	2ND READING CONCURRED	50	0
2/15	3RD READING CONCURRED	49	0
2/19	RETURNED TO HOUSE		
2/19	SIGNED BY SPEAKER		
2/19	SIGNED BY PRESIDENT		
2/20	TRANSMITTED TO GOVERNOR		
2/25	SIGNED BY GOVERNOR		
2/25	CHAPTER NUMBER 50		

EFFECTIVE DATE: 7/01/91

HB 374 INTRODUCED BY J. RICE

APPROPRIATE COAL TRUST MONEY TO
BIG SKY DIVIDEND PROGRAM
BY REQUEST OF GOVERNOR

1/23	INTRODUCED		
1/23	REFERRED TO APPROPRIATIONS		
1/24	FIRST READING		
1/28	FISCAL NOTE REQUESTED		
1/29	FISCAL NOTE RECEIVED		
1/30	FISCAL NOTE PRINTED		
3/20	HEARING		
3/27	TABLED IN COMMITTEE		

HB 375 INTRODUCED BY S.J. HANSEN

INCREASE THE PENALTY FOR PUTTING REFUSE ON HIGHWAY

1/23	INTRODUCED		
1/23	REFERRED TO NATURAL RESOURCES		
1/24	FIRST READING		
1/24	FISCAL NOTE REQUESTED		
1/29	FISCAL NOTE PRINTED		
1/29	FISCAL NOTE RECEIVED		
2/01	HEARING		
2/05	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/08	2ND READING PASSED	62	30
2/11	3RD READING PASSED	60	40
2/12	TRANSMITTED TO SENATE		
2/12	FIRST READING		
2/12	REFERRED TO NATURAL RESOURCES		
3/27	HEARING		
4/02	COMMITTEE REPORT—BILL NOT PASSED		
4/02	ADVERSE COMMITTEE REPORT ADOPTED	34	14

HB 376 INTRODUCED BY MESSMORE, ET AL.

REQUIRE A STATE IMMUNIZATION PROGRAM
TO PREVENT DISEASE AMONG CHILDREN

1/23	INTRODUCED		
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1/23	REFERRED TO HUMAN SERVICES & AGING		
1/24	FIRST READING		
2/01	HEARING		
2/04	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/06	2ND READING PASSED	77	20
2/06	TAKEN FROM ENGROSSING AND REREFERRED TO APPROPRIATIONS		
3/19	HEARING		
3/23	TABLED IN COMMITTEE		

HB 377 INTRODUCED BY RANEY, ET AL.

MEGALANDFILL SITING ACT

BY REQUEST OF ENVIRONMENTAL QUALITY COUNCIL

1/23	INTRODUCED		
1/23	REFERRED TO NATURAL RESOURCES		
1/24	FIRST READING		
1/24	FISCAL NOTE REQUESTED		
1/29	FISCAL NOTE RECEIVED		
1/30	FISCAL NOTE PRINTED		
2/01	HEARING		
2/12	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/15	2ND READING PASSED AS AMENDED	94	5
2/18	3RD READING PASSED	96	4
2/19	TRANSMITTED TO SENATE		
2/19	FIRST READING		
2/19	REFERRED TO NATURAL RESOURCES		
3/13	HEARING		
4/02	COMMITTEE REPORT—BILL CONCURRED		
4/04	2ND READING CONCURRED	35	14
4/05	3RD READING CONCURRED	37	13
4/15	RETURNED TO HOUSE		
4/15	SIGNED BY SPEAKER		
4/15	SIGNED BY PRESIDENT		
4/15	TRANSMITTED TO GOVERNOR		
4/17	SIGNED BY GOVERNOR		
4/17	CHAPTER NUMBER 468		

EFFECTIVE DATE: 4/17/91

HB 378 INTRODUCED BY PAVLOVICH, ET AL.

PROHIBIT SALE OF TOBACCO PRODUCTS TO MINORS

1/23	INTRODUCED		
1/23	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
1/24	FIRST READING		
2/12	HEARING		
2/12	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/14	2ND READING PASSED	62	36
2/16	3RD READING PASSED	70	28
2/18	TRANSMITTED TO SENATE		
2/18	FIRST READING		
2/18	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
3/11	HEARING		
3/13	TABLED IN COMMITTEE		

HB 379 INTRODUCED BY BROOKE, ET AL.

GOOD TIME CREDIT FOR PAROLEES

BY REQUEST OF DEPARTMENT OF INSTITUTIONS

1/24	INTRODUCED		
1/24	REFERRED TO JUDICIARY		
1/24	FIRST READING		
1/24	FISCAL NOTE REQUESTED		
1/28	HEARING		

HOUSE BILL NO. 377

INTRODUCED BY RANEY, WEEDING, HARP, T. BECK, YELLOWTAIL,
DRISCOLL, GILBERT
BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

IN THE HOUSE

JANUARY 24, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON NATURAL RESOURCES.

 FIRST READING.

FEBRUARY 12, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 13, 1991 PRINTING REPORT.

FEBRUARY 14, 1991 ON MOTION, CONSIDERATION PASSED

FEBRUARY 15, 1991 SECOND READING, DO PASS AS AMENDED.

FEBRUARY 16, 1991 ENGROSSING REPORT.

FEBRUARY 18, 1991 THIRD READING, PASSED.
AYES, 96; NOES, 4.

 TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 19, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON NATURAL RESOURCES.

 FIRST READING.

APRIL 2, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

APRIL 4, 1991 SECOND READING, CONCURRED IN.

APRIL 5, 1991 THIRD READING, CONCURRED IN.
AYES, 37; NOES, 13.

 RETURNED TO HOUSE.

IN THE HOUSE

APRIL 5, 1991 RECEIVED FROM SENATE.

 SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *HOUSE* BILL NO. *377*
 2 INTRODUCED BY *Barney Libbey HARR T-Baird*
 3 BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL
 4 *Yellowstone District Exhibit*
 5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A
 6 CERTIFICATION AND LICENSING PROCESS FOR MEGALANDFILLS;
 7 PROVIDING FOR CONTRACTS FOR INFORMATION; REQUIRING THE
 8 SUBMISSION OF LONG-RANGE PLANS; REQUIRING A CERTIFICATE OF
 9 SITE ACCEPTABILITY; SPECIFYING ENVIRONMENTAL FACTORS TO BE
 10 EVALUATED; REQUIRING A FILING FEE; PROVIDING A CONTESTED
 11 CASE HEARINGS PROCESS; SPECIFYING DECISIONMAKING CRITERIA;
 12 REQUIRING A LICENSE; REQUIRING MONITORING; PROVIDING FOR
 13 ENFORCEMENT BY RESIDENTS; PROVIDING A MECHANISM TO RECOVER
 14 DAMAGES FOR CONTAMINATION OF A DRINKING WATER SUPPLY;
 15 PROVIDING FOR JUDICIAL REVIEW; PROVIDING PENALTIES FOR
 16 VIOLATIONS; PROVIDING A SURETY BOND; AND PROVIDING AN
 17 IMMEDIATE EFFECTIVE DATE."

18 STATEMENT OF INTENT

19 A statement of intent is required for this bill because
 20 it grants rulemaking authority to the board of health and
 21 environmental sciences and to the department of health and
 22 environmental sciences. It is the intent of the legislature
 23 that these regulations be designed to protect the public
 24 health, safety, and welfare and the environment.
 25



1
 2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 3 NEW SECTION. **Section 1.** Short title. [Sections 1
 4 through 36] may be cited as the "Montana Megalandfill Siting
 5 Act".
 6 NEW SECTION. **Section 2.** Purpose. (1) It is the
 7 constitutionally declared policy of this state to maintain
 8 and improve a clean and healthful environment for present
 9 and future generations, to protect the environment from
 10 degradation and prevent unreasonable depletion and
 11 degradation of natural resources, and to provide for
 12 administration and enforcement to attain these objectives.
 13 (2) The construction of solid waste facilities that
 14 dispose of over 200,000 tons of waste a year (megalandfills)
 15 may be necessary to meet increasing state and national needs
 16 for solid waste disposal capacity. However, due to the
 17 volume of waste processed, megalandfills may adversely
 18 affect the environment, surrounding communities, and the
 19 welfare of the citizens of this state. Therefore, it is
 20 necessary to ensure that the location, construction, and
 21 operation of megalandfills will produce minimal adverse
 22 effects on the environment and upon the citizens of this
 23 state by providing that a megalandfill may not be
 24 constructed or operated within this state without a
 25 certificate of site acceptability pursuant to [section 11]

1 and a license to operate acquired pursuant to [section 26]
2 and 75-10-221.

3 NEW SECTION. **Section 3. Definitions.** As used in
4 [sections 1 through 36], the following definitions apply:

5 (1) "Application" means an application for a
6 certificate and license submitted in accordance with
7 [sections 11 through 28] and the rules adopted under
8 [sections 11 through 28].

9 (2) "Board" means the board of health and environmental
10 sciences provided for in 2-15-2104.

11 (3) "Certificate" means the certificate of site
12 acceptability issued by the board under [section 11] that is
13 required for siting a megalandfill.

14 (4) "Commence to construct" means:

15 (a) any clearing of land, excavation, construction, or
16 other action that would affect the environment of the site,
17 except that the term does not mean changes for securing
18 geological data, including necessary borings to ascertain
19 subsurface conditions;

20 (b) the modification or upgrading of an existing solid
21 waste disposal facility into a megalandfill, except that the
22 term does not pertain to maintenance or repair of an
23 existing facility.

24 (5) "Department" means the department of health and
25 environmental sciences provided for in Title 2, chapter 15,

1 part 21.

2 (6) "Dispose" or "disposal" means the discharge,
3 injection, deposit, dumping, spilling, leaking, or placing
4 of any solid waste into or onto the land so that the solid
5 waste or any constituent of it may enter the environment or
6 be emitted into the air or discharged into any water,
7 including ground waters.

8 (7) "Megalandfill" means any new or existing solid
9 waste landfill facility that accepts more than 200,000 tons
10 a year of solid waste.

11 (8) "Person" means an individual, firm, partnership,
12 company, association, corporation, city, town, local
13 governmental entity, or any other governmental or private
14 entity, whether organized for profit or not.

15 (9) (a) "Solid waste" means all putrescible and
16 nonputrescible wastes, including but not limited to garbage;
17 rubbish; refuse; ashes; sludge from sewage treatment plants,
18 water supply treatment plants, or air pollution control
19 facilities; construction and demolition wastes; dead
20 animals, including offal; discarded home and industrial
21 appliances; wood products or wood byproducts; and inert
22 materials.

23 (b) "Solid waste" does not mean municipal sewage,
24 industrial wastewater effluents, mining wastes regulated
25 under the mining and reclamation laws administered by the

department of state lands, slash and forest debris regulated under laws administered by the department of state lands, or marketable byproducts.

(10) "Solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste. The term does not include land application units, surface impoundments, injection wells, or waste piles.

NEW SECTION. Section 4. Adoption of rules by board.

The board may adopt rules implementing the certification provisions of [sections 1 through 36], including rules regarding the filing and contents of the application, proof of service and notice requirements, environmental factors to be evaluated, filing fee, hearings process, and other components of the certificate and certification process that the board considers necessary.

NEW SECTION. Section 5. Adoption of rules by

department. The department may adopt rules implementing the licensing provisions of [sections 1 through 36], including rules regarding the contents of the application, monitoring, and other components of the license and licensing process that the department considers necessary.

NEW SECTION. Section 6. Contracts for information. (1)

The department may contract with a potential applicant under

[sections 1 through 36] in advance of the filing of a formal application for the development of information or the provision of services by the department required under [sections 1 through 36].

(2) Payments made to the department under a contract must be credited against the fee payable under [section 16].

NEW SECTION. Section 7. Grants, gifts, and funds. The

department may receive grants, gifts, and other funds from any public or private source to assist in its activities under [sections 1 through 36].

NEW SECTION. Section 8. Money to solid waste

management account. All fees, taxes, fines, and penalties collected under [sections 1 through 36], except those collected by a justice's court, must be deposited in the solid waste management account as provided in 75-10-117 for use by the department in carrying out its functions and responsibilities related to solid waste management.

NEW SECTION. Section 9. Annual long-range plan

submitted -- contents -- available to public. (1) A person may not file an application for a certificate of site acceptability required by [section 11] unless the megalandfill has been adequately identified in a long-range plan at least 2 years prior to acceptance of an application by the department.

(2) The annual long-range plan must be submitted by

1 July 1 of each year and must include the following:

2 (a) the general location, size, and type of all
3 facilities to be owned and operated by the person for which
4 construction is projected during the ensuing 2 years, as
5 well as those facilities to be closed during the planning
6 period;

7 (b) a description of the efforts to involve
8 environmental protection and land use planning agencies in
9 the planning process, as well as other efforts to identify
10 and minimize environmental problems at the earliest possible
11 stage in the planning process;

12 (c) projections of the demand for the service rendered
13 by the person and an explanation of the basis for those
14 projections and a description of the manner and extent to
15 which the proposed facilities will meet the projected
16 demand; and

17 (d) additional information that the department by rule
18 or the department on its own initiative or upon the advice
19 of interested state agencies requests in order to carry out
20 the purposes of [sections 1 through 36].

21 (3) The plan must be furnished to the governing body of
22 each county in which any facility included in the plan under
23 subsection (2)(a) is proposed to be located and must be made
24 available to the public by the department. The applicant
25 shall give public notice throughout the state by publishing

1 at least once a week for 2 consecutive weeks a summary of
2 the proposed plan in newspapers of general circulation. The
3 plan must also be filed with the environmental quality
4 council, the department of highways, the department of state
5 lands, the department of fish, wildlife, and parks, the
6 department of commerce, and the department of natural
7 resources and conservation. Interested persons may obtain a
8 copy of the plan by written request and payment to the
9 department of the costs of copying the plan.

10 NEW SECTION. **Section 10.** Study of included facilities.

11 If a person identifies a proposed facility in its long-range
12 plan, submitted pursuant to [section 9], as one on which
13 construction is proposed within the 2-year period following
14 submission of the plan, the department shall begin to
15 examine and evaluate the proposed site to determine whether
16 construction of the proposed facility would unduly impair
17 the environmental values described in [section 15]. The
18 study may be continued until a person files an application
19 for a certificate under [section 11]. Information gathered
20 under this section may be used to support findings and
21 recommendations required for issuance of a certificate and a
22 license.

23 NEW SECTION. **Section 11.** Certificate required. (1) A

24 person may not construct a megalandfill in the state without
25 first applying for and obtaining a certificate of site

1 acceptability from the board.

2 (2) A certificate may only be issued pursuant to
3 [sections 11 through 25].

4 NEW SECTION. Section 12. Certificate transferable. A
5 certificate may be transferred, subject to the approval of
6 the board, to a person who agrees to comply with the terms,
7 conditions, and modifications contained in [sections 1
8 through 36].

9 NEW SECTION. Section 13. Application -- filing and
10 contents -- proof of service and notice. (1) (a) An
11 applicant shall file with the department an application for
12 a certificate under [section 11] in a form the board
13 requires, containing the following information:

14 (i) a description of the proposed location and of the
15 facility to be built;

16 (ii) a summary of any studies that have been made of the
17 environmental impact of the facility;

18 (iii) a description of at least three reasonable
19 alternate locations for the facility, a general description
20 of the comparative merits and detriments of each location
21 submitted, and a statement of the reasons why the proposed
22 location is best suited for the facility;

23 (iv) baseline data for the primary and reasonable
24 alternate locations;

25 (v) at the applicant's option, an environmental study

1 plan to satisfy the requirements of [sections 1 through 36];
2 and

3 (vi) other information that the applicant considers
4 relevant or that the board by order or rule may require.

5 (b) A copy or copies of the studies referred to in
6 subsection (1)(a)(ii) must be filed with the department, if
7 ordered, and must be available for public inspection.

8 (2) An application must be accompanied by proof of
9 service of a copy of the application on the chief executive
10 officer of each unit of local government, each county
11 commissioner, city or county planning board, and solid waste
12 district, and each federal agency charged with the duty of
13 protecting the environment or of planning land use located
14 in the area in which any portion of the proposed facility is
15 proposed or is alternatively proposed to be located and on
16 the following state government agencies:

17 (a) environmental quality council;

18 (b) department of fish, wildlife, and parks;

19 (c) department of state lands;

20 (d) department of commerce;

21 (e) department of highways; and

22 (f) department of natural resources and conservation.

23 (3) An application must be accompanied by proof that
24 public notice was given to persons residing in the area in
25 which any portion of the proposed facility is proposed or is

alternatively proposed to be located by publication of a summary of the application in newspapers of general circulation that will substantially inform those persons of the application.

NEW SECTION. Section 14. Supplemental material -- amendments. (1) An application for an amendment of an application or a certificate must be in a form and contain information as the board by rule or the department by order prescribes. Notice of an amendment must be given as provided in [section 13(3) and (4)].

(2) An application may be amended by an applicant any time prior to the report made by the department under [section 17]. If the proposed amendment prevents the department from carrying out its duties and responsibilities under [sections 1 through 36], the department may require additional filing fees as the department determines necessary or may require a new application and filing fee.

(3) The applicant shall submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide details with respect to an item described in the original application. This supplemental material may be submitted without filing an application for an amendment. The department's determination as to whether information is supplemental or whether an application for amendment is

required is conclusive.

NEW SECTION. Section 15. Environmental factors evaluated during certification. In evaluating applications for a certificate of site acceptability, the department shall give consideration to the following list of environmental factors and regulations, where applicable, and may by rule add to the factors enumerated in this section:

(1) siting criteria for municipal solid waste landfills consistent with federal requirements as described in 40 CFR part 258;

(2) siting criteria described under the Montana Solid Waste Management Act, Title 75, chapter 10, part 2, and rules adopted under that part;

(3) the Montana solid waste management plan;

(4) solid waste disposal needs, including:

(a) availability and desirability of alternative sources of solid waste disposal in lieu of the proposed facility;

(b) promotional activities of the applicant that may have given rise to the need for the facility;

(c) social benefits resulting from the facility, including protection of public health and environmental quality; and

(d) integrated waste management activities that could reduce the need for additional solid waste disposal

1 capacity;
2 (5) land use impacts, including:
3 (a) the area of land required and its ultimate use;
4 (b) consistency with state and regional solid waste
5 plans;
6 (c) consistency with existing and projected nearby land
7 use;
8 (d) alternative uses of the site;
9 (e) the impact on the population already in the area
10 and the population attracted by construction or operation of
11 the facility;
12 (f) the impact of availability of solid waste disposal
13 at the facility on growth patterns and population dispersal;
14 (g) construction materials and practices, including
15 quality control and quality assurance plans to be followed
16 during construction of all phases of the proposed facility;
17 (h) scenic impacts;
18 (i) the effects on natural systems, wildlife, and plant
19 life;
20 (j) the impacts on important historic, architectural,
21 archaeological, and cultural areas and features;
22 (k) the impacts on public facilities and
23 accommodations; and
24 (l) opportunities for joint use with solid waste
25 disposal-intensive industries;

1 (6) water resources impacts, including:
2 (a) hydrologic studies of the adequacy of water supply
3 and the impact of the facility on streamflow, lakes, and
4 reservoirs;
5 (b) hydrologic studies of the impact of the facility on
6 ground water, including vadose zone studies describing the
7 potential for leachate to migrate from the facility to
8 ground water;
9 (c) an inventory of effluents, including physical,
10 chemical, and biological characteristics;
11 (d) hydrologic studies of effects of effluents on
12 receiving waters;
13 (e) the effect of the facility on water quality;
14 (f) the facility's projected water uses;
15 (g) the effects on plant and animal life, including
16 algae, macroinvertebrates, and fish population;
17 (h) effects on unique or otherwise significant
18 ecosystems, such as wetlands; and
19 (i) ground water, vadose zone, and methane gas
20 monitoring systems and programs; and
21 (7) characteristics of solid wastes that will be
22 disposed of at the facility, including:
23 (a) the rate of solid waste disposal;
24 (b) the solid waste handling practices proposed to be
25 used; and

(c) the present and expected future physical and chemical characteristics of the solid waste.

NEW SECTION. Section 16. Filing fee -- accountability

-- refund -- use. (1) (a) The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application for a certificate. The filing fee must be deposited in the solid waste management account for the use of the department in administering [sections 1 through 36]. The initial filing fee may not exceed the following scale based upon the megalandfill's projected annual tonnage of waste:

(i) a base fee of \$40,000; plus

(ii) 20 cents per ton for every ton of waste over 200,000 tons.

(b) The department may allow a credit against the fee payable under this section for the applicant's costs of developing information or providing services required under [sections 1 through 36] or required for preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, part 1, or the National Environmental Policy Act, 42 U.S.C. 4321, et seq. The applicant may submit the information or a description of the services performed to the department, together with an accounting of the expenses incurred in

preparing the information or performing the services. The department shall evaluate the applicability, validity, and usefulness of the data or services and determine the expenses that may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that the amount to be credited is necessary to carry out its responsibilities under [sections 1 through 36].

(2) (a) The department may contract with an applicant after the filing of a formal application for the development of information or the provision of services required under [sections 1 through 36]. The contract may continue an agreement entered into pursuant to [section 6]. Payments made to the department under a contract must be credited against the fee payable under this section. The revenue derived from the filing fee must be sufficient to enable the department and the board to carry out their responsibilities under [sections 1 through 36]. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) upon 30 days' notice to the applicant. The department and applicant may enter into a contract that exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant

shall pay the filing fee in installments in accordance with a schedule of installments developed by the department; however, an installment may not exceed 20% of the total filing fee provided for in subsection (1).

(3) The applicant is entitled to an accounting of money spent and to a refund with interest at the rate of 6% a year of the portion of the filing fee not spent by the department in carrying out its responsibilities under [sections 1 through 36]. A refund must be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.

(4) The revenue derived from the filing fees must be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out other responsibilities of the department and the board under [sections 1 through 36].

NEW SECTION. Section 17. Study, evaluation, and report on proposed facility. (1) After receipt of an application, the department shall within 90 days notify the applicant in writing that:

- (a) the application is accepted as complete; or
- (b) the application is not complete and list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 30 days notify the applicant in writing that the application

is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with [sections 9 through 17], the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in [section 24]. The department shall use, to the extent it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) Within 1 year following acceptance of a complete application for a facility, the department shall make a report to the board that must contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, Title 75, chapter 1, part 1, if applicable.

NEW SECTION. Section 18. Voiding of application. An application may be voided by the department for:

- (1) any material and knowingly false statement in the application or in accompanying statements or studies required of the applicant;
- (2) failure to file an application in substantially the form and content required by [section 13] and the rules adopted under [section 13]; or

(3) failure to deposit the filing fee as provided in [section 16].

NEW SECTION. Section 19. Hearing date -- location -- department to act as staff. (1) Upon receipt of the department's report submitted under [section 17], the board shall set a date for a hearing to begin not more than 120 days after receipt of the report. A certification hearing must be conducted by the board in Helena or in the county seat of the county in which the facility or the greatest portion of the facility is to be located.

(2) Except as provided in [section 21], the department shall act as the staff for the board throughout the decisionmaking process and the board may request that the department present testimony or cross-examine witnesses as the board considers necessary and appropriate.

NEW SECTION. Section 20. Certificate amendments. (1) Within 30 days after notice of an amendment to a certificate is given as provided in [section 14], including notice to all active parties to the original proceeding, the department shall determine whether the proposed change in the facility would result in a material increase in any environmental impact caused by the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate. If the department determines that the proposed change would result in a

material increase in any environmental impact caused by the facility or a substantial change in the location of all or a portion of the facility, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate. After the hearing, the board shall grant, deny, or modify the amendment with conditions it considers appropriate.

(2) In cases where the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, the board shall grant the amendment either as applied for or upon terms or conditions as the board considers appropriate unless the department's determination is appealed to the board within 15 days after notice of the department's determination is given.

(3) If the department or the board, under subsection (4), determines that a hearing is required because the proposed change would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the applicant has the burden of showing by clear and convincing evidence that the amendment should be granted.

(4) If the department determines that the proposed change in the facility would not result in a material

increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility and a hearing is required because the department's determination is appealed to the board as provided in subsection (2), the appellant has the burden of showing by clear and convincing evidence that the proposed change in the facility would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate.

NEW SECTION. Section 21. Hearing examiner -- restrictions -- duties. (1) The board shall appoint a hearing examiner to conduct certification proceedings under [sections 1 through 36]. The hearing examiner may not be a member of the board or an employee of the department or the board. A hearing examiner must be appointed within 20 days after the department's report has been filed with the board.

(2) A prehearing conference must be held, following notice, within 60 days after the department's report has been filed with the board.

(3) The prehearing conference must be organized and supervised by the hearing examiner.

(4) The prehearing conference must be directed toward a determination of the issues presented by the application, the department's report, and an identification of the

witnesses and documentary exhibits to be presented by the active parties who intend to participate in the hearing.

(5) The hearing examiner shall require the active parties to submit, in writing, and serve upon the other active parties all direct testimony that they propose and any studies, investigations, reports, or other exhibits that any active party wishes the board to consider. These written exhibits and any documents that the board itself wishes to use or rely on must be submitted and served at least 20 days prior to the date set for the hearing. For good cause shown, the hearing examiner may allow the introduction of new evidence at any time.

(6) The hearing examiner shall allow discovery that must be completed before the commencement of the hearing upon good cause shown and under other conditions as the hearing examiner prescribes.

(7) Public witnesses and other interested public parties may appear and present oral testimony at the hearing or submit written testimony to the hearing examiner at the time of their appearance. These witnesses are subject to cross-examination.

(8) The hearing examiner shall issue a prehearing order specifying the issues of fact and of law, identifying the witnesses of the active parties, naming the public witnesses and other interested parties who have submitted written

testimony in lieu of appearance, outlining the order in which the hearing will proceed, setting forth those criteria listed in [section 24] as to which no issue of fact or law has been raised and that are conclusively presumed and are not subject to further proof except for good cause shown, and any other special rules to expedite the hearing that the hearing examiner adopts with the approval of the board.

(9) At the conclusion of the hearing, the hearing examiner shall declare the hearing closed and shall, within 60 days of that date, prepare and submit to the board proposed findings of fact, conclusions of law, and a recommended decision.

(10) The hearing examiner appointed to conduct a certification proceeding under this section shall ensure that the time of the proceeding, from the date the department's report is filed with the board until the recommended report and order of the examiner is filed with the board, does not exceed 9 calendar months unless extended by the board for good cause.

(11) The board or hearing examiner may waive all or a portion of the procedures set forth in subsections (2) through (8) to expedite the hearing for a facility when the department has recommended approval of a facility and no objections have been filed.

NEW SECTION. **Section 22.** Parties to certification

proceeding -- waiver -- statement of intent to participate.

(1) The parties to a certification proceeding or to a proceeding involving the issuance of a decision, opinion, order, certification, or permit by the board under [sections 1 through 36] may include as active parties:

(a) the applicant;

(b) each political entity, unit of local government, and government agency entitled to receive service of a copy of the application under [section 13];

(c) a person entitled to receive service of a copy of the application under [section 13];

(d) a nonprofit organization formed in whole or in part to:

(i) promote conservation or natural beauty;

(ii) protect the environment, personal health, or other biological values;

(iii) preserve historical sites;

(iv) promote consumer interests;

(v) represent commercial and industrial groups; or

(vi) promote the orderly development of the areas in which the facility is to be located; and

(e) any other interested person who establishes an interest in the proceeding.

(2) The department must be an active party in any certification proceeding in which the department recommends

denial of all or a portion of a facility.

(3) The parties to a certification proceeding may also include, as public parties, any Montana citizen and any party referred to in subsections (1)(b) through (1)(e).

(4) A party waives the right to be a party if the party does not participate in the hearing before the board.

(5) Each unit of local government entitled to receive service of a copy of the application under [section 13] shall file with the board a statement showing whether the unit of local government intends to participate in the certification proceeding. If the unit of local government does not intend to participate, it shall list in this statement its reasons for failing to do so. This statement of intent must be published before the proceeding begins in a newspaper of general circulation within the jurisdiction of the applicable unit of local government.

NEW SECTION. **Section 23.** Record of hearing -- procedure -- rules of evidence -- burden of proof. (1) Any studies, investigations, reports, or other documentary evidence, including those prepared by the department, that any party wishes the board to consider or that the board itself expects to use or rely upon must be made a part of the record.

(2) A record must be made of the hearing and of all testimony taken.

(3) In a certification proceeding held under [section 19], the applicant has the burden of showing by clear and convincing evidence that the application should be granted and that the criteria of [section 24] are met.

(4) All proceedings under [sections 19 through 23] are governed by the procedures set forth in [sections 19 through 23], the procedural rules adopted by the board, and the Montana Rules of Evidence unless one or more rules of evidence are waived by the hearing examiner upon a showing of good cause by one or more of the parties to the hearing. No other rules of procedure or evidence apply except that the contested case procedures of the Montana Administrative Procedure Act apply if not in conflict with the procedures set forth in [sections 19 through 23] or the procedural rules adopted by the board.

NEW SECTION. **Section 24.** Decision of board -- findings necessary for certification. (1) Within 180 days after submission of the recommended decision by the department, the board shall make complete findings, issue an opinion, and render a final decision upon the record, either granting or denying the application for a certificate as filed or granting it upon terms, conditions, or modifications of the siting of the facility as the board considers appropriate.

(2) The board may not grant a certificate either as proposed by the applicant or as modified by the board unless

1 it finds and determines:

- 2 (a) the nature of the probable environmental impact;
- 3 (b) that the facility minimizes adverse environmental
- 4 impact, considering the state of available technology and
- 5 the nature and economics of the various alternatives;
- 6 (c) that the location of the facility as proposed
- 7 conforms to applicable state and local laws and regulations,
- 8 except that the board may refuse to apply any local law or
- 9 regulation if it finds that, as applied to the proposed
- 10 facility, the law or regulation is unreasonably restrictive
- 11 in view of the existing technology, of factors of cost or
- 12 economics, or of the needs of consumers, whether located
- 13 inside or outside of the directly affected government
- 14 subdivisions;
- 15 (d) that the facility will serve the public interest;
- 16 (e) any impacts of the facility according to each of
- 17 the criteria listed in [section 15];
- 18 (f) that the proposed site is better suited for a
- 19 landfill than alternate sites in the state where the waste
- 20 originates; and
- 21 (g) that the applicant has fully mitigated the loss of
- 22 wildlife habitat, either through onsite or offsite habitat
- 23 improvements.
- 24 (3) In determining that the facility will serve the
- 25 public interest, the board shall consider:

- 1 (a) the items listed in subsections (2)(a) and (2)(b);
- 2 (b) the benefits to the applicant and the state
- 3 resulting from the proposed facility;
- 4 (c) the effects of the economic activity resulting from
- 5 the proposed facility;
- 6 (d) the effects of the proposed facility on the public
- 7 health, welfare, and safety; and
- 8 (e) any other factors that it considers relevant.

9 NEW SECTION. Section 25. Conditions imposed. If the
10 board determines that the location of all or a part of the
11 proposed megalandfill should be modified, it may condition
12 its certificate upon the modification, provided that the
13 persons residing in the area affected by the modification
14 have been given reasonable notice of the modification.

15 NEW SECTION. Section 26. License required. (1) A
16 person may not commence to construct a megalandfill in the
17 state without first applying for and obtaining a license
18 pursuant to 75-10-221. The licensing process must be
19 concurrent with the certification process required in
20 [section 11 through 25].

21 (2) The department shall make the decision to grant or
22 deny the license within 30 days of the certification
23 decision, as provided in [section 24].

24 (3) Once a license has been issued, a megalandfill may
25 not be constructed, operated, or maintained except in

conformity with the license and any terms, conditions, and modifications contained in the license.

NEW SECTION. Section 27. License transferable. A license may be transferred, subject to the approval of the department, to a person who agrees to comply with the terms, conditions, and modifications contained in [sections 1 through 36].

NEW SECTION. Section 28. Opinion issued with decision
-- contents. (1) In rendering a decision on an application for a license for a megalandfill, the department shall issue an opinion stating its reasons for the action taken.

(2) In addition to the requirements of 75-10-221, any license issued by the department shall include the following:

(a) an environmental evaluation statement related to the megalandfill being certified. The statement must include but not be limited to analysis of the following information:

(i) the environmental impact of the proposed facility;
(ii) any adverse environmental effects that cannot be avoided by issuance of the license;

(iii) problems and objections raised by other federal and state agencies and interested groups; and

(iv) alternatives to the proposed facility;

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a plan for monitoring the certified megalandfill site between the time of certification and completion of construction; and

(d) a statement signed by the applicant showing agreement to comply with the requirements of [sections 1 through 36] and the conditions of the certificate.

NEW SECTION. Section 29. Monitoring. The department shall monitor the operations of all certificated facilities to ensure continuing compliance with [sections 1 through 36] and with certificates issued under [section 11] and to discover and prevent noncompliance with [sections 1 through 36] or certificates issued under [section 11].

NEW SECTION. Section 30. Revocation or suspension of license. A license may be revoked or suspended by the department following notice and an opportunity for a hearing before the department for:

(1) any material false statement in the application or in accompanying statements or studies required of the applicant if a true statement would have warranted the department's refusal to grant a license;

(2) failure to comply with the terms or conditions of the certificate; or

(3) violation of any provision of [sections 1 through 36], rules adopted under [sections 1 through 36], or orders of the department.

NEW SECTION. **Section 31. Enforcement by residents.** (1)

A person with knowledge that a requirement of [sections 1 through 36] or a rule adopted under [sections 1 through 36] is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that states the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the statements subjects the person to the penalties prescribed for a violation of 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the person may bring an action of mandamus in the district court of the first judicial district of Montana. If the court finds that a requirement of [sections 1 through 36] or a rule adopted under [sections 1 through 36] is not being enforced, the court may order the public officer or employee whose duty it is to enforce the requirement or rule to perform those duties. If he fails to do so, the public officer or employee must be held in contempt of court and is subject to the penalties provided by law.

NEW SECTION. **Section 32. Action to recover damages to**

water supply. An owner of an interest in real property who

obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a person to recover damages for contamination, diminution, or interruption of the water supply proximately resulting from the operation of a facility. The remedy provided in this section does not exclude the use of any other remedy that may be available under the laws of the state.

NEW SECTION. **Section 33. Judicial review of department**

and board of health decisions. (1) An applicant aggrieved by the final decision of the board on an application for a certificate or the final decision of the department on an application for a license may obtain judicial review of that decision by filing a petition in district court.

(2) The judicial review procedure is the same as that for contested cases under Title 2, chapter 4, part 7.

(3) This section does not prohibit the department from holding a hearing on all matters that are not the subject of a pending appeal by the applicant under subsection (1).

NEW SECTION. **Section 34. Penalties for violation --**

civil action by attorney general. (1) (a) A person who commences to construct or operate a megalandfill without obtaining a certificate required under [section 11] and a license required under [section 26], who constructs, operates, or maintains a facility other than in compliance

with the certificate or violates any other provision of [sections 1 through 36] or any rule or order adopted under [sections 1 through 36], or who knowingly submits false information in any report, long-range plan, or application required by [sections 1 through 36] is liable for a civil penalty as provided in subsection (2).

(b) Each day of a continuing violation constitutes a separate offense.

(c) The penalty is recoverable in a civil suit brought by the attorney general on behalf of the state in the district court of the first judicial district of Montana.

(2) A person who knowingly violates the provisions of subsection (1) shall be fined not more than \$25,000 for each violation or be imprisoned for not more than 1 year, or both. Each day of a continuing violation constitutes a separate offense.

(3) In addition to any penalty provided in subsection (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of [sections 1 through 36], it may refer the matter to the attorney general who may bring a civil action on behalf of the state in the district court of the first judicial district of Montana for injunctive or other appropriate relief against the violation and to enforce [sections 1 through 36] or a certificate issued under [section 11]. Upon

a proper showing, a permanent or preliminary injunction or temporary restraining order must be granted without bond.

(4) The department shall also enforce [sections 1 through 36] and may bring legal actions to accomplish the enforcement through its own legal counsel.

(5) All fines and penalties collected must be deposited in the solid waste management account for the use of the department in administering [sections 1 through 36].

NEW SECTION. Section 35. Order not stayed by appeal --

stay or suspension by court -- limitations. An appeal from a department order does not automatically stay or suspend the operation of the order. The court may, upon motion by a party, stay or suspend, in whole or in part, the operation of the department's order on terms the court considers just. The court's action must be in accordance with the practice of courts exercising equity jurisdiction, subject to the following limitations:

(1) A stay may not be granted without notice to the parties and an opportunity to be heard by the court.

(2) A department order may not be stayed or suspended without finding that irreparable damage would otherwise result to the party seeking the stay or suspension, and a stay or suspension must specify the nature of the damage.

NEW SECTION. Section 36. Surety bond. If an order of the department is stayed or suspended, the court may require

1 a bond with good and sufficient surety conditioned that the
2 party petitioning for review answer for all damages caused
3 by the delay in enforcing the order of the department. The
4 cost of the bond is not chargeable to the applicant as part
5 of the fee. If the party petitioning for review prevails
6 upon final resolution of an appeal, the party does not
7 forfeit bond and is not responsible for damages caused by
8 delay.

9 NEW SECTION. **Section 37.** Codification instruction.

10 [Sections 1 through 36] are intended to be codified as an
11 integral part of Title 75, chapter 10, and the provisions of
12 Title 75, chapter 10, apply to [sections 1 through 36].

13 NEW SECTION. **Section 38.** Effective date. [This act] is
14 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0377, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill to establish a certification and licensing process for "mega-landfills".

ASSUMPTIONS:

1. Rules for long-range plan submittals and procedures for contracts for information will be developed by DHES in FY92. DHES will develop written application and licensing rules, procedures for orders and a fee system for supplemental material.
2. The Montana State Solid Waste Management Plan will be developed during the biennium (as required under separate legislation, HB0160). A solid waste fee system (proposed under separate legislation) would be in place to generate revenues for this legislation.
3. One long-range plan will be submitted to DHES within the biennium.
4. 50 requests for copies of the long-range plan will be processed by DHES in FY92.
5. No applications for a certificate of site acceptability will be received during the biennium.
6. The following personnel in addition to current level would be required: 0.25 FTE Database Technician (Grade 12, Step 2), and 0.50 FTE Administrative Assistant (Grade 10, Step 2).

FISCAL IMPACT:Expenditures:

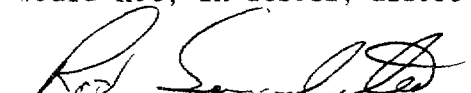
	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	0.00	0.75	0.75	0.00	0.75	0.75
Personal Services	0	16,621	16,621	0	16,585	16,585
Operating Expenses	<u>0</u>	<u>30,000</u>	<u>30,000</u>	<u>0</u>	<u>44,000</u>	<u>44,000</u>
Total	0	46,621	46,621	0	60,585	60,585

Funding:

Solid Waste Fees (02)	0	46,621	46,621	0	60,585	60,585
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

HB0377 would not, in itself, affect county or municipal revenues or expenditures.


 ROD SUNDSTED, BUDGET DIRECTOR
 Office of Budget and Program Planning

1-29-91
 DATE


 BOB RANEY, PRIMARY SPONSOR

1/30/91
 DATE

Fiscal Note for HB0377, as introduced.

HB 377

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRPERSON BOB RANEY, on February 1, 1991, at 3:00 pm.

ROLL CALL

Members Present:

Bob Raney, Chairman (D)
Mark O'Keefe, Vice-Chairman (D)
Beverly Barnhart (D)
Vivian Brooke (D)
Ben Cohen (D)
Ed Dolezal (D)
Orval Ellison (R)
Russell Fagg (R)
Mike Foster (R)
Bob Gilbert (R)
David Hoffman (R)
Dick Knox (R)
Bruce Measure (D)
Tom Nelson (R)
Bob Ream (D)
Jim Southworth (D)
Howard Toole (D)
Dave Wanzenried (D)

Staff Present: Gail Kuntz, Environmental Quality Council
Paul Sihler, Environmental Quality Council
Lisa Fairman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: CHAIR RANEY announced HJR 10, HB 375, and HB 377 will be heard.

HEARING ON HJR 10

Presentation and Opening Statement by Sponsor:

REP. MARY LOU PETERSON, House District 1, Eureka, distributed an informational handout with petitions of support attached. EXHIBIT 1 She stated HJR 10 seeks to keep the status quo of Ten Lakes Scenic Area by recommending to Congress the creation of the Ten Lakes Recreation Area. Designation of the Ten Lakes area occurred in 1964 as part of Lee Metcalf's bill. The size of the area has grown with an addition of 15,700 acres in 1974. In

discussion. Supporters of HJR 10 are interested in protecting the unique area from logging and mining. There is commitment to preserve its wild values. Currently, Lincoln County has 16% unemployment. The communities are looking for options to better their economic status. Snowmobiling is part of the quality of life in the area. Local snowmobile groups worked with the Forest Service and Fish, Wildlife and Parks to protect the natural values found in the Ten Lakes Area. REP. PETERSON stated she supported HJR 10.

HEARING ON HB 375

Presentation and Opening Statement by Sponsor:

REP. STELLA JEAN HANSEN, HD 57 - Missoula, stated the idea of HB 375 originated with a constituent, Blanch Rogers. Ms. Rogers is active in fighting pollution. The bill raises the fine for littering from \$100 to \$250 for first offense and \$250 to \$500 for a second offense. She stated the current litter law is not effective. This bill may generate some revenue and help to reduce littering.

Proponents' Testimony:

REP. BEN COHEN, supported HB 375. He stated he has a similar bill that addresses controlling disposal of wastes and refuse in an acceptable method. Littering is not a small problem and needs to be addressed.

Jim Jensen, Montana Environmental Information Center (MEIC), supported HB 375.

Opponents' Testimony: none

Questions From Committee Members:

REP. ORVAL ELLISON asked REP. HANSEN if she considered taking the money to establish a hot line similar to the poaching hotline. The main problem with littering appears to be enforcement. REP. HANSEN responded positively to the idea. She suggested littering enforcement could be added to game wardens responsibilities. Littering is very detrimental to wild animals. REP. HOFFMAN suggested the current highway statute addressing littering could be amended to increase the fines rather than creating a new statute.

Closing by Sponsor: REP. HANSEN closed.

HEARING ON HB 377

Presentation and Opening Statement by Sponsor:

REP. BOB RANEY, House District 82, Livingston said there is a need to prepare for importation and consolidation of wastes. The

bill addresses licensing and managing megalandfills (landfills that dispose of more than 200,000 tons of garbage a year). Developers will need to submit a long range plan of the proposed development to the Board of Health. The plan will include, but is not limited to, studies on the environmental, economic, and sociological effects of the development. Because of its importance, hydrology will be studied closely. A two year prior notification will be required. This will allow the Department of Health and Environmental Sciences to research the site and to prepare for licensing work load. The landfill developers will need a certificate of site acceptability from the Board of Health. Section 15 of the bill outlines the environmental factors that need to be addressed during the planning and operation process. The applicant will pay a filing fee of \$40,000 to offset the costs accrued by the Department. The filing costs were based on estimations of the expected costs to Department. The filing fee may be adjusted when actual costs are accrued. Additionally, a fee of \$0.20/ton is imposed on landfills disposing more than 200,000 tons/year. The Department must file a report on the application in one year. The Board will base its evaluation and decision on the criteria listed on page 18. The Board may require additional requirements, such as monitoring. The bill is intended to coordinate with the Montana Environmental Policy Act (MEPA) and existing laws. HB 377 allows for citizen involvement and enforcement. The bill outlines the enforcement and penalties for failure to comply with the Montana Waste Management Act and this Megalandfill Siting Act.

Proponents' Testimony:

Brian McNitt, Montana Environment Information Center (MEIC), supported HB 377. EXHIBIT 22

Paul Hawkes, Northern Plains Resource Council (NPRC), supported HB 377. The issue of waste dumping is a concern for numerous reasons. The threat to the water resource is an especially great threat. Mr. Hawkes stated he would like to see all importation of out-of-state waste halted.

Scott Elds, Custer Resource Alliance (CRA), supported HB 377. He opposed any importation of garbage. He doesn't want to see Montana become a cheap dumping ground for other people's garbage. If people reduced, recycled and reused new landfills and megalandfills would not be necessary. Examples of communities reducing, recycling and reusing can be found in the eastern United States. As a result of these efforts, new landfills are not necessary. Mr. Elds suggested amendments to HB 377 and supplied a fact sheet on solid waste to the committee. EXHIBITS 23 and 24

Linda Lee, Montana Audubon Legislative Fund, supported HB 377. Improper waste management can have enormous environmental consequences. Water is a major concern. Sound certification, monitoring, and enforcement are key to the program.

Richard Parks, NPRC, supported HB 377. He presented amendments and urged their adoption. EXHIBIT 25

Ron Erickson, University of Montana Environmental Studies professor, Missoula, agreed with NPRC that water is the critical issue. He stated safe transport of wastes is another key issue that needs to be closely examined. Garbage is a resource that should be considered an alternative energy source under the Montana Major Facilities Siting Act. In the long term, large dumps of garbage can produce menthane. There are three main factors necessary for the production of methane: deep garbage, warm temperatures, and water. The use of large dumps or megalandfills as future energy sources should be examined. Environmentally sound management of dumps is absolutely necessary.

Georgia Mentikov, CRA, supported HB 377. He stated megalandfills may have large amounts of household hazardous wastes. Property values near megalandfills may suffer. The risks associated with megalandfills are too high for the possible benefits. Mr. Mentikov requested that Section 25, page 28, be changed to allow local governments to decide on modifications rather than the Board or Department of Health and Environmental Sciences.

Susan Stanton, school teacher and member of CRA, supported HB 377. The bill would provide local communities with some protection. She explained some of her concerns with HB 377. On page 27, lines 3-5, the term "minimize" is used in a comparative fashion. Minimum amounts or maximum effects should be described. A maximum amount of ash should be included in the definition of ash. Hearings need to be closer to the proposed site. She supported HB 377 and emphasized the need for community participation and protection of the environment.

Kristin Page, Montana Public Information Research Group (MontPIRG), supported HB 377. She stated the last resort in managing garbage is the creation of new landfills. People need to reduce, recycle and reuse more often. Megalandfills are a great threat to the environment.

Scott Snelson, Montana Wildlife Federation, supported HB 377. He said the "wastelands" in Eastern Montana, as they often are referred to, are critical to wildlife. Megalandfills have the potential of significantly detrimentally affecting these areas.

Sue Raker, professional forester and farmer from Michigan, supported HB 377. She had been a Montana resident and doesn't want to see Montana make the same mistakes Michigan made. When the dumps were created in their rural area, the local people were told that they would be protected from spillage and that the soils would prevent seepage. Michigan Department of Natural Resources test wells show that major seepage and groundwater contamination has occurred. The damage is beyond restitution. Personal treasures are bankrupt in attempts to clean up the

damage and to get the responsible parties to act on clean up processes. Ms. Raker emphasized there is no safe dump and she can not understand why anyone would want a megalandfill in or near their community.

Diane Hoff, Dawson County Resource Council, supported HB 377. She stated transportation practices need to be closely scrutinized. The farther wastes are transported the greater the risk of accidental spills. She said she does not want to see any importation of waste into Montana.

Lyle Quick, McCone County, stated HB 377 will provide counties with a tool to help make development decisions. Because environmental and sociological impacts will need to be addressed prior to the project siting, better decisions will be made.

Opponents' Testimony:

Charles Madler, Baker, stated he is considering developing a dump in Fallon county. He opposed HB 377 because the bill would prohibit development of dumps. HB 377 is a vehicle to stop the importation of garbage. It would financially discourage the creation of dumps. The bill is not good solid waste management. Defining megalandfills to be dumps that receive greater than 200,000 tons/year is unfair. Survival of some communities will be dependent upon the creation and operation of megalandfills. HB 377 is bad and illegal legislation. The bill banning importation of waste also is illegal. Mr. Madler stated HB 377 is just a reaction to an emotional issue.

Questions From Committee Members:

REP. REAM asked Ms. Raker if she would send him some information concerning their landfill issue. She replied yes. He thanked her for coming all the way to share her concerns. REP. DICK KNOX asked Ms. Raker what is the average rainfall in her area. Ms. Raker responded average rainfall is 27.8"/year.

Closing by Sponsor:

REP. RANEY stated that the issues of methane production, water resources and transportation need to be closely evaluated when considering megalandfills and when debating HB 377. His preference would be to prohibit importation of waste but realizes it may not be possible. HB 377 will provide for better and more safe management of megalandfills. REP. RANEY responded to comments made by an opponent, Mr. Madler. REP. RANEY stated the 200,000 tons/year is an arbitrary number based on approximations of amount of garbage created in-state and out-of-state. He is very willing to lower the amount. The \$5/ton fee is an estimate of regulation costs. If the actual amount is less, then the fee can be reduced. A moratorium on garbage importation is not illegal or unconstitutional. HB 377 is a good law. It is

unanimously supported by the Environmental Quality Council. A great amount of public and scientific input was considered when developing the bill. The situation in Michigan, described by Ms. Raker, exemplifies what occurs when planning does not occur. Montana does not want to be in the same situation. HB 377 allows for the necessary planning to occur. Planning is not over reacting. The issue is emotional because of the potential deleterious effects caused by megalandfills. REP. RANEY closed by urging his support for HB 377.

EXECUTIVE ACTION ON HB 266

Motion: REP. COHEN MOVED HB 266 DO PASS.

Motion: REP. GILBERT moved to adopt the amendments requested by Department of State Lands. EXHIBIT 26

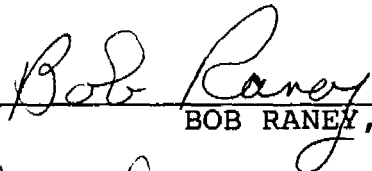
Discussion: Gail Kuntz, Committee Staffer, explained that the amendments bring the current state coal act into compliance with the standards in Federal laws.

Vote: Motion to adopt the amendments carried.

Motion/Vote: REP. COHEN MOVED HB 266 DO PASS AS AMENDED. Motion carried unanimously.

ADJOURNMENT

Adjournment: 7:00 pm.



BOB RANEY, Chair



LISA FAIRMAN, Secretary

BR/lf

HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE 2-1-91

NAME	PRESENT	ABSENT	EXCUSED
REP. MARK O'KEEFE, VICE-CHAIRMAN	/		
REP. BOB GILBERT	/		
REP. BEN COHEN	/		
REP. ORVAL ELLISON	/		
REP. BOB REAM	/		
REP. TOM NELSON	/		
REP. VIVIAN BROOKE	/		
REP. BEVERLY BARNHART	/		
REP. ED DOLEZAL	/		
REP. RUSSELL FAGG	/		
REP. MIKE FOSTER	/		
REP. DAVID HOFFMAN	/		
REP. DICK KNOX	/		
REP. BRUCE MEASURE	/		
REP. JIM SOUTHWORTH	/		
REP. HOWARD TOOLE	/		
REP. DAVE WANZENRIED	/		
REP. BOB RANEY, CHAIRMAN	/		

CS05NATRES.MAN

EXHIBIT 22

DATE 2-1-91

HB 377

HOUSE BILL 377

The Montana Environmental Information Center strongly supports the intent of House Bill 377. We urge the Committee to pass the Bill with the amendments proposed by Northern Plains Resource Council and Representative Raney.

If Montana does begin to allow out-of-state waste to be dumped here, we must have in place the most stringent regulations possible to protect the environment. We are especially concerned with ^{an} amendment pertaining to the determination of need. If waste gets imported into Montana it should be required that to the greatest extent possible, the waste has been reduced, re-used and recycled. ~~Amendment number (8) on the sheet would accomplish this.~~

Once again, M.E.I.C. supports House Bill 377 and urges the Committee to include all of the amendments proposed by N.P.R.C. and Representative Raney. Thank You. Brian McNitt

Suggested Amendments to HB 377
The Megalandfill Siting Act
February 1, 1991
House Natural Resources

DATE 2-1-91
HB 377

1. Page 4, line 10
Following: "solid waste"
Insert: "or any ash monofill which accepts 50,000 tons or more a year of incinerator ash, either fly ash or bottom ash or both."

2. Page 5,
Following: line 9
Insert:

(11.) "Water protection area" means the area proposed for the facility that would be subject to the certificate and the area that is one mile up-gradient by two miles cross-gradient by three miles down-gradient of the respective hydrologic slopes of surface water and ground water flowing through the proposed certified area.

(12.) "Water protection plan" means the operator's written proposal, as required and approved by the board, for the protection of water resources within the water protection area. The board shall adopt rules setting forth requirements for the content of the proposal, providing that the proposal must include the following elements:

(a) a list containing the names and addresses of all water users in the water protection area;

(b) a detailed assessment of the existing water resources, hydrology, and beneficial uses within the water protection area, including a two-year baseline study, sufficient to enable the department to assess the potential and probable cumulative impacts of the proposed operations upon the hydrology, quantity, and quality of water resources and beneficial uses in the water protection area;

(c) an assessment of the consequences of the proposed operations on the hydrology, quantity, and quality of water resources in the water protection area, including the potential for diminishment or degradation of water resources and the potential for adverse effects on beneficial uses;

(d) an assessment of the potential for water resources and beneficial uses that may be diminished or degraded to be permanently restored or replaced to approximate hydrologic characteristics, quantity, and quality that existed prior to the commencement of the proposed operations and the proposed methods of restoration or replacement; and

(e) the estimated cost of restoring or replacing any water resources that may be diminished or degraded by the proposed operations and the estimated cost of ensuring that continuation of beneficial uses within the water protection area at no greater cost to water users than under conditions that existed prior to the commencement of the proposed

2-1-99

HB 377

operations.

(13.) "Water resources" means all streams, lakes, wells, springs, irrigation systems, wetlands, watercourses, waterways, drainage systems, and other bodies of surface water and ground water, including natural and man-made water bodies that are outside the state's boundaries but within the boundaries of a water protection area.

(14.) "Water user" means any person or entity holding a water right as provided in Title 85, chapter 2, and any state or federal agency or unit of local government with jurisdiction over water resources or beneficial uses.

3. Page 8, line 17
Following: "environmental,"
Insert: "social and economic values"
4. Page 9, line 17
Following: "environmental"
Insert "social and economic"
5. Page 9, line 24
Following: "locations"
Insert: "which must include a two-year baseline study of water resources within the water protection area;"
6. Page 10,
Following: line 4
Insert "(vi) a water protection plan."
7. Page 12, line 21
Following: "social"
Strike: "benefits"
Insert: "impacts"
8. Page 13, line 25
Following line 25
Insert "(m) the economic impact on the local area, local government infrastructure, and existing industries in the area;"
9. Page 14,
Following: line 20
Strike: "and"
Insert "(j) the water protection plan; and"
10. Page 15,
Following: line 2
Insert: "(d) inspection practices for preventing the illegal dumping of hazardous wastes into the facility."
11. Page 15,
Following: line 2
Insert: "(8) Transportation practices, including: (a) route and mode of transporting waste; (b) environmental, social and economic impacts of transportation facilities; and (c) transfer facilities."

12. Page 19, line 8
Strike: "or"
Insert: "and"
13. Page 19, line 22
Strike: "environmental impact"
Insert: "environmental, social and economic impacts"
14. Page 27, lines 3 - 5
Strike: "that the facility minimizes adverse environmental impact,"
Insert: "that the facility constitutes a minimal adverse impact on the environment"
15. Page 27, line 8 - 14
Following: line 7 "regulations"
Strike: "except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside of the directly affected government subdivisions;"
16. Page 27,
Following: line 23
Insert: "(h) the adequacy of the water protection plan."
17. Page 28
Insert: "(g) the legal and financial history of the applicant, including, but not limited to, convictions for violations of any law or regulation, and financial soundness."
Renummer: subsequent sections
18. Page 31, line 25
Following: "property"
Insert: "or water user"
19. Page 32,
Following: line 8
Insert: "If the owner or water user uses water in the water protection area, the burden of proof is on the landfill operator to show with clear and convincing evidence that the water damage was not the fault of the operation of the landfill."

2-1-91
HB 377

Solid Waste, Landfills and Groundwater Contamination

EXHIBIT 24
DATE 2-1-91
HB 377

A Northern Plains Resource Council Factsheet

January 1991

GARBAGE IS CATCHING UP

Americans are fast approaching the 21st century full of optimism and enthusiasm for a cleaner and brighter world. But, the affluent, fast paced and disposable American culture is producing garbage at a stupendous rate. U.S. garbage generation grew 80%, from 1960 to 1986, rising from 87.5 million tons to 157.7 million tons. It is expected to increase 22% by the year 2000 (Time Magazine, 9/5/88, "Garbage, Garbage, Everywhere").

Each U.S. citizen generates roughly 1,600 pounds of garbage each year. Montanans collectively generate 600,000 tons each year. Urban as well as rural areas are simply running out of options for disposing of their waste, most of which is now hauled away to landfills, dumped in the ocean or incinerated. This factsheet examines the consequences of burying garbage in landfills.

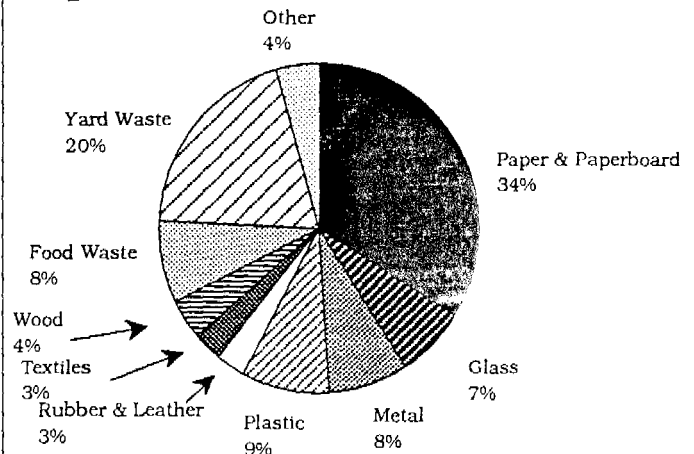
The Environmental Protection Agency (EPA) is issuing new regulations that recognize the hazards of solid waste and the problems with disposal in landfills. These regulations make siting and monitoring of landfills strict and consequently very expensive. The result has been that small, older landfills are closing and fewer larger landfills are being developed. Further, many urban areas are looking to sparsely populated states to take care of their waste.

IT'S JUST HOUSEHOLD GARBAGE...

The total amount of solid waste sent to our landfills each year amounts to approximately 150 million tons (Utne Reader Nov/Dec 1990). The municipal solid waste produced in this country in just one day fills roughly 63,000 garbage trucks which, lined up end, to end would stretch the distance from San Francisco to Los Angeles (Scientific American December 1988 Vol. 259 No. 6 "Managing Solid Waste").

Figure 1 shows the average "profile" of U.S. garbage.

Figure 1.



Sources: The U.S. Postal Service; Environmental Defense Fund; and Franklin Associates Ltd.

Household garbage contains a whole host of products and chemicals that when mixed together create a toxic situation. Paint, paint thinner, fertilizer, pesticides and cleansers are household items that end up being hauled to the city dump or buried on private property. Additionally, one thousand new chemicals are invented each year, making it virtually impossible to predict all the possible combinations of chemicals that will be created inside a landfill. According to a study conducted by Geraghty and Miller of Port Washington, New York, under contract to EPA, wastes that are deposited in landfills continue to weather and leach for years. Chemical interactions within a landfill do not cease when dumping stops.

BUILDING LANDFILLS, A LEAKY SCIENCE

All landfills leak. According to several studies, most notably the one by Geraghty and Miller, even the most modern and up-to-date landfill technologies cannot prevent leakage after a relatively short period of time. EPA discovered that 86% of the landfills studied had contaminated underground water supplies beyond the boundaries of the landfill.

Northern Plains Resource Council

DATE 2-1-91
HB 377

February 1, 1991

Testimony for the Northern Plains Resource Council Supporting House Bill 377

Mr. Chairman, members of the Committee, for the record my name is Richard Parks. I own and operate a sporting goods store and fishing outfitting service in Gardiner, MT. My entire industry is dependent on the maintenance of good water quality though I appear today as Legislative Chair of the Northern Plains Resource Council. As many of you know we have been concerned with water quality since our earliest days as an organization and over the last three years have been developing what we believe is a coherent approach to the water quality challenges faced by Montana. Obviously a mega-landfill constitutes a major threat to water quality.

The observation driving our concern is that Montana is a desert state. Under those conditions water is often THE critical resource controlling our economic development, even life itself. As the excellent work done by the Environmental Quality Council during the interim session points out, it is also a resource uniquely vulnerable and difficult to repair. Our proposal has four main points: 1. Extend pre-development baseline data collection; 2. Define, on the basis of that data, a water protection area and develop a comprehensive water protection plan as part of the application for certification process; 3. Back up this plan with a water-specific bond that helps clarify to the developer his interest in being realistic in his proposal and consistent in his compliance, and; 4. Expand the protection afforded prior water users by clarifying their right to protection or replacement and placing the burden of proof on the developer in a damage situation. I will walk through the water protection aspects of the amendments we are submitting and point out where they fit, both on the master list of amendments and as implementation of our protection concepts.

Proposed Amendments to HB 377
February 1, 1991
House Natural Resources

Ex. 25
2-1-91
HB 377

1. [2] Section 3, Definitions, page 5, following line 10; Insert:

(11.) "Water protection area" means the area proposed for the facility that would be subject to the certificate and the area that is one mile up-gradient by two miles cross-gradient by three miles down-gradient of the respective hydrologic slopes of surface water and ground water flowing through the proposed certified area.

(12.) "Water protection plan" means the operator's written proposal, as required and approved by the board, for the protection of water resources within the water protection area. The board shall adopt rules setting forth requirements for the content of the proposal, providing that the proposal must include the following elements:

(a) a list containing the names and addresses of all water users in the water protection area;

(b) a detailed assessment of the existing water resources, hydrology, and beneficial uses within the water protection area, including a two-year baseline study, sufficient to enable the department to assess the potential and probable cumulative impacts of the proposed operations upon the hydrology, quantity, and quality of water resources and beneficial uses in the water protection area;

(c) an assessment of the consequences of the proposed operations on the hydrology, quantity, and quality of water resources in the water protection area, including the potential for diminishment or degradation of water resources and the potential for adverse effects on beneficial uses;

(d) an assessment of the potential for water resources and beneficial uses that may be diminished or degraded to be permanently restored or replaced to approximate hydrologic characteristics, quantity, and quality that existed prior to the commencement of the proposed operations and the proposed methods of restoration or replacement; and

(e) the estimated cost of restoring or replacing any water resources that may be diminished or degraded by the proposed operations and the estimated cost of ensuring that continuation of beneficial uses within the water protection area at no greater cost to water users than under conditions that existed prior to the commencement of the proposed operations.

(13.) "Water resources" means all streams, lakes, wells, springs, irrigation systems, wetlands, watercourses, waterways, drainage systems, and other bodies of surface water and ground water, including natural and man-made water bodies that are outside the state's boundaries but within the boundaries of a water protection area.

Page 25
DATE 2-1-91
HJR10

(14.) "Water user" means any person or entity holding a water right as provided in Title 85, chapter 2, and any state or federal agency or unit of local government with jurisdiction over water resources or beneficial uses.

2. [6] Section 13(1)(a)(iv), page 10, line 24 Following: "locations" Insert:

"which must include a two-year baseline study of water resources within the water protection area;"

3. [7] Section 13(1), page 10, Following: line 4 Insert

"(vi) a water protection plan."

4. [11] Section 15(6), page 14, line 20

Strike: "and"

Insert "(j) the water protection plan; and"

5. [19] Section 24(2), page 27, Following: line 23

Insert: "(h) the adequacy of the water protection plan."

6. [22] Section 24(3), page 28 Following: line 7

Insert: "(g) the legal and financial history of the applicant, including, but not limited to, convictions for violations of any law or regulation, and financial soundness. (renumber subsequent sections)"

7 [23]. Section 32, page 31, line 25

Following: "property"

Insert: "or water user"

Ex. 25

2-1-91

HB 377

8. [24]. Section 32, page 32,

Following: line 8

Insert:

"If the owner or water user uses water in the water protection area, the burden of proof is on the landfill operator to show with clear and convincing evidence that the water damage was not the fault of the operation of the landfill."

This last clause may be challenged on the basis that it presumes guilt rather than our constitutionally required presumption of innocence. My response is that it does so in the same way, and for the same basic reasons as our DUI laws which have been tested and passed by the courts.

Thank you

Richard C. Parks

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

HB 377

Nature Resources COMMITTEE BILL NO. ~~HB 377~~

DATE 2-1-91 SPONSOR(S) ~~William D. Perry~~ Perry

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Neva Hassanein	NPRC	✓	
Teresa Erickson	NPRC	✓	
Lyle Quick	McCone County	✓	
Ellen Pfister	Yellowstone Co. (Bull Lake Rd. Overpass)	✓	
Richard Parks	NPRC	✓	
Georgia Mentikov	CRA --	✓	
Susan Stanton ^{miles city}	Custer Resource Alliance	✓	
Louis Bruce Dillon	NPRC	✓	
Jean Clark	Cottonwood Resource Council	✓	
Nelson Clark	CRC	✓	
Quinton Ehley	CRC	✓	
Mona Tyler	CRC	✓	
JOAN Humiston	B.A.	✓	
Loretta Long	B.A.	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

2 of 3
megaland fill

Natural Resources

COMMITTEE

BILL NO. HB 377 -

DATE 2-1-91

SPONSOR(S) Rep. Bob Raney

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ron Erickson - Missoula	self	✓	
Charles Madler-Baker	Fallus County		✓
Kristin Page	Mont PIRG	✓	
Jim James	M.E.I.C.		
John Gatchell	Montana Wilderness		
Alyce Guehn	Carter & Son of Ekalaka Co. Comm		✓
Gina Hannukela	Self	✓	
Janet Ellis	MT Audubon	✓	
Sara Toubman ^{940 Wilder} Helena	self	✓	
Brian McMill	MEIC	✓	
Heidi Svoboda		✓	
Scott Stetsen	MT Wildlife Federation	✓	
Ernest O. Redlix Jr.	BMRC/NPRC	✓	
Michelle LeFurky			✓

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ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

3 of 3

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. HB 377
DATE 2-1-91 SPONSOR(S) Raney
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<u>Anna Hoff</u>	<u>Deussen Co. Resource Council</u>	✓	
<u>ANN PRUNUSKE</u>	<u>SELF</u>	✓	
<u>SUE RAKER</u>	<u>SELF</u>	✓	
<u>DAVID PRICE, GARDINER</u>	<u>Bear Ck Council</u>	✓	
<u>Randy Hansen</u>	<u>Fallon County Landowner</u>		✓
<u>Donald Raquin</u>	<u>Fallon County</u>		✓

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ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRPERSON BOB RANEY, on February 11, 1991,
at 3:00 pm.

ROLL CALL

Members Present:

Bob Raney, Chairman (D)
Mark O'Keefe, Vice-Chairman (D)
Beverly Barnhart (D)
Vivian Brooke (D)
Ben Cohen (D)
Ed Dolezal (D)
Orval Ellison (R)
Russell Fagg (R)
Mike Foster (R)
Bob Gilbert (R)
David Hoffman (R)
Dick Knox (R)
Bruce Measure (D)
Tom Nelson (R)
Bob Ream (D)
Jim Southworth (D)
Howard Toole (D)
Dave Wanzenried (D)

Staff Present: Gail Kuntz, Environmental Quality Council
Paul Sihler, Environmental Quality Council
Lisa Fairman, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

HEARING ON SB 18

Presentation and Opening Statement by Sponsor:

SEN. GAGE, SD 5 - Cut Bank, stated SB 18 addresses some of the definition problems found in the oil and gas mitigation bill from last session. **SEN. GAGE** went through the bill explaining the changes and additions. He highlighted that new language is added in Section 2 expanding the definition of abandoned property and wells. In Section 2, State-owned lands were added as a result of a conflict between the Department of State Lands and Conoco. DSL had stated that the Oil and Gas Board did not have jurisdiction over State lands. DSL claimed that state lands are not taxable and therefore the Board does not have authority over them.

REP. REAM stated he wasn't quite as sour as REP. COHEN but did feel uncomfortable with the situation as it stands now. He stated, in theory, the Task Force serves a beneficial purpose. It could educate members, facilitate the exchange of information, and serve as an advocate for ethical land management. The goals of the Task Force are good, however, they are not carried out or are carried out weakly.

REP. HOFFMAN suggested that the problems are the group members rather than the goals of the organization. If four good Montana members are appointed perhaps positive changes could occur. REP. COHEN responded that SEN. SWIFT is attempting to stop any positive changes, demonstrated by calling a meeting when the Democratic members could not attend. REP. VIVIAN BROOKE expressed concern over the Task Force's bias toward industry. She referred to the Task Force's minutes, and pointed out that only the pro-industry side was represented during the meetings discussing the spotted owl. REP. COHEN agreed and said that is only one example of the pro-industry bias that prevails on the Task Force.

The committee decided to continue discussion on SJR 6 at a later date.

EXECUTIVE ACTION ON HB 377

Discussion: REP. GILBERT stated HB 377 came out of The Environmental Quality Council unanimously. This megalandfill bill is a major piece of legislation, setting the foundation for proper waste management.

Motion: REP. GILBERT MOVED HB 377 DO PASS.

Discussion: CHAIR RANEY asked Paul Sihler, staffer, to explain the amendments. EXHIBIT 14 Mr. Sihler explained that amendments #1 & #10 are technical in nature, clarifying definitions.

Motion/Vote: REP. BROOKE moved to adopt amendments #1 & #10. Motion carried unanimously with Rep. Foster absent for voting.

Discussion: Mr. Sihler explained that amendment #2 amends the definition of landfill to include mono-fill. The reason for this is to address the concerns for concentrations of ash. REP. TOOLE inquired if the definition includes coal ash. Mr. Sihler said the amendment is intended to address solid waste incinerators. He stated he was not sure if coal ash is actually excluded. REP. GILBERT asked why the Northern Plains Resource Council proposed both the 50,000 tons and 35,000 tons amendments. CHAIR RANEY stated that they compromised down to 35,000 because 50,000 was too much. REP. GILBERT asked if a multiplier of 20% or 10% reduction was used. He said when Northern Plains had talked with him, they were using an 80% reduction in solids based on 220,000 tons/year to make the facilities of similar size. REP. RANEY replied they used 17.5% with the most recent set of proposals.

REP. RANEY said that Gail Kuntz, staffer, suggested adding the word "municipal" to clarify REP. TOOLE'S concerns. REP. RANEY asked Neva Hassanein, Northern Plains Resource Council, how much ash comes out of the Livingston incinerator. Ms. Hassanein replied approximately 35,000 tons. REP. COHEN suggested inserting "solid waste" before "incinerator" in amendment #2. REP. RANEY agreed.

Motion: REP. SOUTHWORTH moved to adopt amendment #2 with the word "solid waste" added before incinerator.

Discussion: REP. MEASURE asked why there is so much concern over the definition of incinerator. REP. TOOLE stated that coal incineration needs to be clarified. CHAIR RANEY said he wanted to include ash and to clarify the intent because it is very important to address imported wastes. REP. COHEN said he understood that the Environmental Protection Agency (EPA) had specified a special category for ash. Ms. Hassanein responded that fly ash is considered hazardous and therefore is subject to the hazardous waste laws. Bottom ash is not generally considered hazardous, though it may be very toxic.

Vote: Motion to adopt amendment #2 with the words "solid waste" added carried unanimously.

Discussion: Mr. Sihler explained that amendments #3 and #4 add the words "social and economic impacts" to the considerations in the permitting process.

Motion: REP. BROOKE moved to adopt amendments # 3 and #4.

Discussion: REP. COHEN inquired if the amendments were located in the appropriate place. REP. O'KEEFE replied yes. CHAIR RANEY responded that the amendments are technically fine. It is important to have social and economic factors considered when evaluating the potential impacts.

Vote: Motion to adopt amendments #3 and #4 carried unanimously.

Motion: REP. O'KEEFE moved to adopt amendment #5.

Discussion: REP. O'KEEFE stated that the word "impacts" is needed instead of "benefits" because the word "benefits" implies a positive effect. REP. GILBERT responded he would like to change to word to "changes" because "impacts" implies a negative effect. REP. REAM disagreed saying that "impact" does not imply negative effects. "Impact" is commonly used for documents of this nature. REP. O'KEEFE withdrew his motion.

Motion/Vote: REP. GILBERT moved to adopt amendment #5, using the word "changes" instead of "impacts". Motion carried unanimously.

Discussion: REP. BARNHART pointed out that inconsistencies exist in the wording relating to social and economic factors in Section 15, lines 2 and 6. Ms. Kuntz agreed. REP. DOLEZAL suggested that "environment" be struck from line 6.

Motion/Vote: REP. BARNHART moved to insert "social and economic" on page 12, line 2 following "Environmental" and to strike "environmental" from page 12, line 6. Motion carried unanimously.

Motion: REP. BROOKE moved to adopt amendments #6 and #7.

Discussion: Mr. Sihler explained that amendment #7 adds a new subsection that expounds upon the criteria list. REP. KNOX said that it appears the bill is becoming more and more restrictive. He said he will oppose the bill on those grounds. REP. BROOKE stated that it is logical to include the wording. The wording is often used in urban areas and should be included for consistency. It does not ask for too much more. REP. KNOX pointed out that the word "impact" is used again. REP. MEASURE responded "impact" is a neutral word. REP. GILBERT asked if the Environmental Impact Statement (EIS) will address these concerns. Ms. Kuntz replied yes, under the Montana Environmental Policy Act (MEPA). REP. GILBERT asked if an EIS would have to be done. Ms. Kuntz replied she assumed so. CHAIR RANEY stated that this will do the same thing as MEPA. Ms. Kuntz responded that there is a subtle difference. This will put into statute the kinds of things to be included in the permitting process.

Vote: Motion to adopt amendments #6 and #7 carried 16 to 2 with Reps. Knox and Gilbert voting no.

Motion/Vote: REP. O'KEEFE moved to adopt amendment #8. Motion carried unanimously.

Motion: REP. O'KEEFE moved to adopt amendment #9.

Discussion: Mr. Sihler stated that amendment #9 addresses transportation practices and incorporates inspection practices for illegal dumping. CHAIR. RANEY stated that garbage may be sitting for long periods of time while enroute to the megalandfill. This amendment addresses some aspects of the transport of the wastes to the dump. REP. BARNHART inquired what are transfer facilities. REP. O'KEEFE replied that it refers to garbage trucks. Mr. Sihler clarified that it refers to the transportation of the wastes from the train to the landfill. REP. BROOKE asked if the trucking routes are addressed. CHAIR RANEY replied yes. REP. BROOKE inquired how the bill left EQC without the trucking consideration incorporated. CHAIR RANEY replied the bill was modeled after the Major Facility Siting Act. The issue of transportation was inadvertently overlooked. REP. GILBERT spoke in support of the amendment saying that it is part of the licensing process.

Vote: Motion to adopt amendment #9 carried unanimously.

Discussion: Mr. Sihler explained that amendments #11 through #14 concern hearing requirements. The language is modeled after the Major Facility Siting Act. The change would be to include hearings in both Helena and the county.

REP. FOSTER asked if the hearing in Helena would be technical in nature and the one in the county for public input. Mr. Sihler replied that they would be duplicate hearings. REP. FOSTER stated based on his experience with the Public Service Commission, it is very common to have technical meetings in Helena and a satellite hearing in the county. REP. GILBERT said that holding two technical meetings is very expensive. There is no necessity for duplication. Public input could be gained via other avenues. CHAIR RANEY agreed and commented that public hearings will occur in the county through the EIS process. REP. GILBERT asked Jim Jensen, MEIC, to comment. Mr. Jensen stated that any landfill siting must follow MEPA and the Public Participation Act. MEPA requires that hearings be held in local communities. CHAIR RANEY emphasized that the amendments are redundant and unnecessary.

Motion/Vote: REP. TOOLE moved to adopt amendment #15. Motion carried unanimously.

Motion: REP. O'KEEFE moved to adopt amendment #16.

Discussion: REP. O'KEEFE stated he moved amendment #16 because it clarifies that the intent is for a minimum impact. REP. ELLISON suggested to amend it to add "acceptable" minimal adverse. REP. O'KEEFE responded that he did not feel comfortable with that suggestion because more direction and guidance is needed. REP. TOOLE agreed that guidance is needed. He stated there are problems with the words minimal and acceptable. They are too vague and open to interpretation. Terminology similar to "best available technology" may be more appropriate. REP. FAGG stated he could no longer support HB 377. He said the amendments are destroying the nature of the compromise bill. CHAIR RANEY and REP. GILBERT both stated they agreed with REP. TOOLE.

Vote: Motion to adopt amendment #16 failed 2 to 16, with Reps. O'Keefe and Brooke voting aye.

Discussion: Mr. Sihler stated that amendments #18 and #19 are additions to the list of items to be considered when siting a landfill. CHAIR RANEY stated these amendments were added to help prevent unethical practices. REP. HOFFMAN asked Mr. Sihler to explain "legal history". Mr. Sihler replied the intent is to review the history of violations or compliance of an applicant.

Motion: REP. BROOKE moved to adopt amendments #18 and #19.

Discussion: REP. BROOKE asked REP. HOFFMAN if he felt the amendments are logical. REP. HOFFMAN replied no. He said they will open up a "can of worms". REP. ELLISON stated that they are illegal.

REP. BROOKE withdrew her motion to adopt amendments #18 and #19.

CHAIR RANEY asked Ms. Kuntz to review the second set of amendments. EXHIBIT 15 Ms. Kuntz explained that the intent of amendment #3 is to have the applicant study the hydrology of the area. Amendment #5, the heart of the amendments, addresses water and a water protection plan. Part (E) of amendment #5 states that, should water be degraded or detrimentally affected, the water will be replaced or restored at no higher costs to water users than the costs of the original water use. REP. O'KEEFE stated that similar amendments will be proposed for hard rock mining permitting and regulations. He said the intent is to protect the ground and surface water resources. Many of the items would be done under the EIS. The main difference is the definition of the geographic location and of the two-year study.

Motion: REP. SOUTHWORTH moved to adopt the second set of amendments. EXHIBIT 15

Discussion: REP. DOLEZAL asked who would pay for the study. REP. O'KEEFE responded that the applicant would. REP. TOOLE stated a thorough hydrological study and protection of the hydrologic resource is vital. He asked where else in the bill is hydrology addressed. He supported the amendments. Mr. Sihler responded that the current landfill licensing application process and the Megalandfill Siting Act both address hydrology as a focus for decision making. These amendments differ in the specifics and in the definition of water protection area. CHAIR. RANEY stated that, as a sponsor of the bill and from a purely political standpoint, he is certain that if these amendments pass then the bill will die.

Motion/Vote: REP. FOSTER made a substitute motion to table the second set of amendments. Motion carried with Reps. O'Keefe and Brooke voting no.

Motion/Vote: REP. GILBERT MADE A SUBSTITUTE MOTION THAT HB 377 DO PASS AS AMENDED. Motion carried 17 to 1 with Rep. Hoffman voting no.

Discussion on Status of HB 484:

REP. REAM declared that the "True Grit" subcommittee on gravel and sand pits recommended that a substitute bill be drafted. The substitute bill, emphasizing local control, would be a cleaner approach than the current bill. CHAIR RANEY expressed concern that the bill would not meet the drafting deadlines. REP. REAM responded that Greg Petesch, Legal Council, assured him that it would be completed in time.

HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE 2-11-91

NAME	PRESENT	ABSENT	EXCUSED
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓		
REP. BOB GILBERT	✓		
REP. BEN COHEN	✓		
REP. ORVAL ELLISON	✓		
REP. BOB REAM	✓		
REP. TOM NELSON	✓		
REP. VIVIAN BROOKE	✓		
REP. BEVERLY BARNHART	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. MIKE FOSTER	✓		
REP. DAVID HOFFMAN	✓		
REP. DICK KNOX	✓		
REP. BRUCE MEASURE	✓		
REP. JIM SOUTHWORTH	✓		
REP. HOWARD TOOLE	✓		
REP. DAVE WANZENRIED	✓		
REP. BOB RANEY, CHAIRMAN	✓		

CS05NATRES.MAN

HOUSE STANDING COMMITTEE REPORT

February 12, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that House Bill 377 (first reading copy -- white) do pass as amended.

Signed: Bob Raney, Chairman

And, that such amendments read:

1. Page 4, line 8.

Following: "Megalandfill"

Insert: "or "facility"

2. Page 4, line 10.

Following: "waste"

Insert: "or any ash monofill that accepts 35,000 tons or more a year of solid waste incinerator ash, either fly ash or bottom ash"

3. Page 8, line 17.

Following: "environmental"

Insert: ", social, and economic"

4. Page 9, line 17.

Following: "environmental"

Strike: "impact"

Insert: ", social, and economic impacts"

5. Page 12, line 21.

Strike: "benefits"

Insert: "changes"

6. Page 12, line 2.

Following: "Environmental"

Insert: ", social, and economic"

7. Page 12, line 6.

Strike: "environmental"

8. Page 13, line 23.
Strike: "and"

9. Page 13, line 25.
Following: "industries;"
Insert: "and"

(m) the economic impact on the local area, local government infrastructure, and existing industry;"

10. Page 14, lines 20 and 25.
Following: ","
Strike: "and"

11. Page 15, line 2.
Following: "waste"
Strike: "."
Insert: "; and"

(d) inspection practices for preventing the illegal dumping of hazardous waste into the facility;

(8) transportation practices, including:

(a) route and mode of transporting waste;

(b) environmental, social, and economic impacts of transportation facilities; and

(c) transfer facilities."

12. Page 18, line 17.
Strike: "part 1,"

13. Page 19, line 22.
Following: "environmental"
Strike: "impact"
Insert: ", social, and economic impacts"

Amendments to House Bill No. 377
First Reading Copy

Requested by Rep. Raney
For the Committee on Natural Resources

Prepared by Paul Sihler
February 10, 1991

1. Page 4, line 8.
Following: ""Megalandfill""
Insert: "or "facility""
2. Page 4, line 10.
Following: "waste"
Insert: "or any ash monofill that accepts 35,000 tons or more a
year of incinerator ash, either fly ash or bottom ash"
3. Page 8, line 17.
Following: "environmental"
Insert: ", social, and economic"
4. Page 9, line 17.
Following: "environmental"
Strike: "impact"
Insert: ", social, and economic impacts"
5. Page 12, line 21.
Strike: "benefits"
Insert: "impacts"
6. Page 13, line 23.
Strike: "and"
7. Page 13, line 25.
Following: "industries;"
Insert: "and
(m) the economic impact on the local area, local government
infrastructure, and existing industry;"
8. Page 14, lines 20 and 25.
Following: ";"
Strike: "and"

9. Page 15, line 2.

Following: "waste"

Strike: "."

Insert: "; and

(d) inspection practices for preventing the illegal dumping of hazardous waste into the facility;

(8) transportation practices, including:

(a) route and mode of transporting waste;

(b) environmental, social, and economic impacts of transportation facilities; and

(c) transfer facilities."

10. Page 18, line 17.

Strike: "part 1,"

11. Page 19, line 3.

Strike: "date"

Insert: "dates"

Strike: "location"

Insert: "locations"

12. Page 19, line 6.

Strike: "a date"

Insert: "dates"

Strike: "a hearing"

Insert: "hearings"

13. Page 19, line 7.

Strike: "A certification hearing"

Insert: "The certification hearings"

14. Page 19, line 8.

Following: "Helena"

Strike: "or"

Insert: "and"

15. Page 19, line 22.

Following: "environmental"

Strike: "impact"

Insert: ", social, and economic impacts"

16. Page 27, lines 3 and 4.

Following: "facility" on line 3

Strike: "minimizes" on line 3 through "impact" on line 4

Insert: "constitutes a minimal adverse impact on the environment"

Ex. 14
2/11/91
HB 377

17. Page 27, lines 7 through 14.

Following: "regulations" on line 7

Strike: the remainder of subsection (c) through "subdivisions" on
line 14

18. Page 28, line 7.

Following: ";

Strike: "and"

19. Page 28, line 8.

Strike: "."

Insert: "; and

(f) the financial and legal history of the applicant,
including but not limited to his financial soundness or
convictions for violations of any law or regulation."

Amendments to House Bill No. 377
First Reading Copy

Requested by Rep. Raney
For the Committee on Natural Resources

Prepared by Gail Kuntz
February 9, 1991

1. Statement of Intent, page 1.

Following: line 25

Insert: "The board shall adopt rules that define the specific subjects, types of data, and level of water monitoring that an applicant for a certificate of site acceptability for a megalandfill shall include in the 2-year baseline study of water resources, hydrology, and beneficial uses within the water protection area. The information collected by the applicant must be sufficient to allow the department to assess the cumulative impacts of the proposed megalandfill upon the hydrology, quantity, and quality of water resources and upon beneficial uses in the water protection area. The board's rules must identify the specific types of analysis an applicant shall prepare in order to provide an adequate assessment of the consequences of proposed megalandfill operations upon water resources and beneficial uses that may be diminished or degraded by the proposed megalandfill and the estimated costs of restoration and replacement of the water resources and beneficial uses.

The board's rules must define the characteristics of significant aesthetic values and significant wildlife habitat that are defined in [section 3] as beneficial uses of water resources. Significant wildlife habitat must include habitat for state and federally designated threatened and endangered species and all species of wildlife and fish that are classified as game species and for which licenses are required for hunting and fishing in the state."

2. Page 3.

Following: line 8

Insert: "(2) "Beneficial uses" means those beneficial uses of water resources defined in 85-2-102(2) and other uses of water resources that include but are not limited to maintenance of minimum stream flows, public and private water leases, significant aesthetic values, and significant wildlife habitat."
Renumber: subsequent subsections

3. Page 5.

Following: line 9

Insert: "(12) "Water protection area" means the area proposed for siting a megalandfill that would be subject to the certificate and the area that is 1 mile up-gradient by 2 miles cross-gradient by 3 miles down-gradient of the respective hydrologic slopes of surface water and ground water flowing through the area that would be subject to the certificate.

(13) "Water protection plan" means the applicant's written proposal, as required pursuant to [section 13], for the protection of water resources with the water protection area.

(14) "Water resources" means all streams, lakes, wells, springs, irrigation systems, wetlands, watercourses, waterways, drainage systems, and other bodies of surface water and ground water, including natural and manmade water bodies that are outside the state's boundaries but within the boundaries of a water protection area.

(15) "Water user" means a person or entity holding a water right, as provided in Title 85, chapter 2, and any state or federal agency or unit of local government with jurisdiction over water resources or beneficial uses."

4. Page 9, line 24.

Following: "locations"

Insert: ", including a 2-year baseline study of water resources within the water protection area"

5. Page 9.

Following: line 24

Insert: "(v) for the primary location, a water protection plan that must include the following elements:

(A) a list containing the names and addresses of all water users in the water protection area;

(B) a detailed assessment of the existing water resources, hydrology, and beneficial uses within the water protection area sufficient to enable the department to assess the potential and probable cumulative impacts of the proposed megalandfill upon the hydrology, quantity, and quality of water resources and beneficial uses in the water protection area;

(C) an assessment of the consequences of the proposed megalandfill on the hydrology, quantity, and quality of water resources in the water protection area, including the potential for diminishment or degradation of water resources and the potential for adverse effects on beneficial uses;

(D) an assessment of the potential for water resources and beneficial uses that may be diminished or degraded to be permanently restored or replaced to the approximate hydrologic characteristics, quantity, and quality that existed prior to the commencement of operations of the proposed megalandfill and the proposed methods of restoration or replacement; and

(E) the estimated cost of restoring or replacing any water resources that may be diminished or degraded by the proposed megalandfill and the estimated cost of ensuring that continuation of beneficial uses within the water protection area at no greater cost to water users than under conditions that existed prior to the commencement of operation of the proposed megalandfill;"

Renumber: subsequent subsections

6. Page 10, line 4.

Following: "require"

2/11/91

HB 377

Insert: ", except that the board shall adopt rules setting forth requirements for the content of the water protection plan"

7. Page 14, line 18.

Following: "wetlands;"

Strike: "and"

8. Page 14.

Following: line 20

Insert: "(j) the water protection plan; and"

9. Page 27, line 20.

Following: "originates;"

Strike: "and"

10. Page 27, line 23.

Following: "improvements"

Strike: "."

Insert: "; and"

Insert: "(h) that the water protection plan is adequate."

11. Page 31, line 25.

Following: "property"

Insert: "or a water user"

12. Page 32, line 8.

Following: "state."

Insert: "If the owner or water user has a beneficial use of water in the water protection area, the burden of proof is on the megalandfill operator to show with clear and convincing evidence that the damage to water resources was not caused by the operation of the megalandfill."

MINUTES

**MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Lawrence Stimatz, on March 13, 1991, at 3:00 p.m.

ROLL CALL

Members Present:

Lawrence Stimatz, Chairman (D)
Cecil Weeding, Vice Chairman (D)
John Jr. Anderson (R)
Esther Bengtson (D)
Don Bianchi (D)
Steve Doherty (D)
Lorents Grosfield (R)
Bob Hockett (D)
Thomas Keating (R)
John Jr. Kennedy (D)
Larry Tveit (R)

Members Excused: None

Staff Present: Paul Sihler (EQC).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

HEARING ON HB 858

Presentation and Opening Statement by Sponsor:

Bob Gilbert, District 22, presented HB 858 to the committee. The bill establishes a statewide household hazardous waste education program, Gilbert said, and sets up a public education program to include information about alternatives to disposal of household hazardous waste, the largest contributor to municipal landfills. An alternative disposal site next to a landfill is a possibility for disposal of these wastes, Gilbert said. The bill advocates

Closing by Sponsor:

Gilbert stated that he felt HB 858 was fairly non-controversial. "If SB 209 does not pass," Gilbert said, "I will personally go out and raise the \$2,000 to fund this bill because I think it is absolutely necessary that we get the state of Montana educated about what they can do about household hazardous wastes and our landfills."

HEARING ON HB 918

Presentation and Opening Statement by Sponsor:

Representative Jim Southworth, District 86, told the committee that HB 918 was a "simple housecleaning bill" introduced by the House Natural Resources Committee at the request of the Department of Health and Environmental Sciences. The bill changes the definition of solid waste in the first part of the law to make it consistent with the second part of the law, Southworth explained. The solid waste statutes are divided into two parts: Part I deals with planning and administration and Part 2 deals with licensing and transportation. Definitions of solid waste were not consistent when the legislature upgraded the definition of solid waste in Part 2, as it failed to do so in Part 1. HB 918 remedies this problem, Southworth said.

Proponents' Testimony:

There were no proponents' to HB 918.

Opponents' Testimony:

There were no opponents' to HB 918.

Questions From Committee Members:

Senator Doherty asked which section was being amended to correct the inconsistency.

Southworth stated the language was in line 23, page 2; the solid waste definition in part I.

Closing by Sponsor:

Closing by Southworth.

HEARING ON HB 377

Presentation and Opening Statement by Sponsor:

Representative Raney, District 82, told the committee that HB 377

was the product of the Environmental Quality Council as assigned under SJR 19 from the last session. "There is a lot of interest in importing waste into Montana for the purpose of disposal, Raney said, "particularly solid waste. The first proposals for infectious waste were made about four years but what we're really talking about in this bill is municipal solid waste," Raney said. "One of the major laws we want to put into place during the proposed two year moratorium on solid waste is HB 377, the Megalandfill Siting Act," Raney said. "During this two year period, one of the main bills needed to be put into place would be the Megalandfill Siting Act. The bill would provide for the siting of dumps, 200,000 tons per year. Currently Montana has 500,000 tons of waste generated in the state. With the subtitle D regulations that will soon be taking place, Montana will be seeking fewer and fewer landfills which means the landfills will be larger and larger in size and when the 200,000 ton point is reached, then it would be necessary to use the Major Facilities Siting Act," Raney said. A long range plan for a megalndfill will be necessary, Raney noted, and the plan must be updated annually. The board's decision to grant or deny the application must be based on extensive criteria found on page 27 of the bill, Raney said.

Proponents' Testimony:

Tom Breitbach, Northern Plains Resource Council, testified in support of HB 377. (EXHIBIT #1).

Chris Kaufman, MEIC, told the committee that the bill received "careful scrutiny" in the EQC process and the House Natural Resources Committee. The bill offers a procedure to protect the health, welfare and environment of Montana when there is a proposal to build a large, solid waste dump in the state.

"Whether or not you are for or against importation of waste, you can favor this bill," Kaufman said. "If you want to keep waste out, you can say this bill will do that for us and if you want to bring waste in, you can say this bill shows us the rules for how to bring this waste in." "What the bill will do," Kaufman said, "is keep out those who do not have a well thought out plan." Kaufman said that the state cannot afford any more Superfund sites and there is a need for laws that are "more strenuous with more regulations when we are considering a landfill of this magnitude."

Linda Lee, Montana Audubon Legislative Fund, stated that Montana "needs more regulations on large volume landfills. The environmental consequences of landfills are enormous, Lee said, and the contamination of groundwater should be of great concern." Lee urged certification and monitoring of landfills and penalties for non-compliance.

Ronee Hanson, Montana Senior Citizens, told the committee she supported HB 377.

Floyd Higgins, Custer Resource Alliance, submitted testimony in support of HB's 377 and 891.(EXHIBIT #1a).

Opponents' Testimony:

Dennis Winters, Montana Market Development, testified in opposition to HB 377. Winters stated that when he began employment with the Market Development Company, he did not know "how really terrible the situation in eastern Montana is from the standpoint of economic development." (Winters presented slides depicting the economics of eastern Montana). Montana declined more in land value than any other western state between 1982 and 1989, Winters told the committee "and at a time when the state is at its worst, there are forces within the state that want to lockup resources. Baker County found a formation perfect for a landfill site and is in need of the income that could be generated from its development. The Megalandfill bill before you, Winters said, has almost nothing to do with the so-called technical side that the proponents say they want to do something with. This bill is to make sure there will never be importation of waste in Montana. Everyone knows that is what this bill is for. Mr. Raney stated that he will continue to throw roadblocks in the way of Montana having a megalandfill site. If this committee passes this bill, it will be creating a process of appeals of political rangling that will lock away resources in Montana and will take away jobs from Montanans," Winters said. Winters noted the "dire need" for industries in some communities in Montana. "The Megalandfill Bill does not allow for new industry," Winters said. (A 60 Minutes story about Fallon County was presented to the committee). Winters told the committee that Baker, MT (Fallon County) residents want a "fair bill that does not make it impossible for them to survive with a landfill."

Joyce Almy, Fallon County Development Corporation, told the committee she was opposed to HB 377 because the bill does not allow for the economic growth needed in eastern Montana. Fallon County residents have reached their first goal, said Almy, with the possibility of new jobs created through a megalandfill. "In our search for ways to survive, we have struck gold right there in our arid land in Fallon County. Yet, this Megalandfill Bill presents intentional roadblocks to the revitalization of Fallon County's use of its natural resources. We can have an environmentally sound, state-of-the-art landfill. We in Baker and Fallon County won't settle for less. This bill doesn't even give us a chance," Almy said.

Charles Madler, Fallon County Planner, presented amendments to HB 377. (EXHIBIT #2 and 2a). Madler showed the committee photographs of a typical large landfill and provided samples of the pit-liners used in commercial landfills. Madler told the community that Baker has a unique geological structure that would be ideal for a landfill site: Cedar Creek Anti-Cline. (EXHIBIT #3). There are no groundwater or aquifers nearby, Madler stated. This site varies from 2 to 7 miles between aquifers and, Madler stated, "we

SENATE NATURAL RESOURCES COMMITTEE

March 13, 1991

Page 6 of 13

believe this would be environmentally safe. Water is the most important resource in southeastern Montana and must be protected at all costs," Madler said. The Megalandfill Bill will not allow industry to be developed in Baker," Madler concluded.

Rick Menger, Fallon County Sanitarian, testified in opposition to HB 377. Menger told the committee that, "without reservation", he could say that the megalandfill site being considered in Fallon County "will have no affect on air, soil, water or wildlife." (Menger presented a video showing a megalandfill site in Oregon). "Please let the young people in Baker, MT know that their lives are not being dictated by fanaticism, but by truth and a common sense approach to responsible legislation," Menger said.

Nancy Schoner, editor of Fallon County Times, told the committee she opposed HB 377. More than 80% of Fallon County residents recently stated they felt a megalandfill would be "good for the county," Schoner said. "HB 377 is a real good way to put a fence around Montana, which seems to be what Raney wants to do."

Marion Hanson, Baker, a life-long resident of Fallon County, testified in opposition to HB 377.

Michelle LaFurge, representing Fallon County, stated she was hoping to answer Senator Stimatz's question: "What is it that makes it prohibitive that a town like Baker could attract a large megalandfill to its community?" LaFurge asked the committee to consider the proposed amendments. "When you're talking about the interests of Montana, I urge you to consider that it is in the interests of Fallon County to have a real and legitimate and unduly burdensome plan for a landfill. Are the people of Montana adequately protected without being subject to punitive legislation? If you cannot amend away the prohibitions that exist in this bill, I urge you, then, to vote down HB 377."

Senator Tom Keating, District 44, read portions of a letter from the Assistant City Administrator in Billings, Bruce McCandless. In the letter, Keating noted, McCandless references HB's 377 and 891. "The purpose of this letter is to inform you about the city of Billings concerns regarding the House Bills referenced above. Our concern is based on the impact which this legislation would have on our operation of the existing Billings landfill. HB 377 would establish procedures for siting and licensing any new or existing solid waste facility. The bill, designed by the Environmental Quality Council is a means of discouraging and regulating the importation of solid waste. Yet, as you can see, we believe the bills would also apply to the Billings landfill despite our not allowing importation. Our recently completed landfill studies show that we presently dispose of 163,000 tons of solid waste per year. The 200,000 ton level will be reached early in the next century. When that occurs, HB 377 in its present form, would require new licensing, major cost increases, a local election, duplicative bonding, post closure procedures. To avoid this, the alternative would be to shed some of the waste

NR031391.SM1

we presently accept from rural Yellowstone, Musselshell and Carbon Counties in order to stay below the 200,000 tons per year. This would be counter-productive to the state's goal of closing small facilities and encouraging regional disposal facilities. It would be extremely costly for these smaller entities to establish new disposal sites. We propose that HB 377 be amended. Our preference would be to strike "all existing solid waste facilities." If this is unacceptable, we suggest redefining megalandfill. These amendments would meet the goals of EQC," McCandless said.

Lynnette Hintze, Greater Richland County Economic Development Corporation, submitted testimony in opposition to HB 377. (EXHIBIT # 4).

Questions from the committee:

Senator Bengtson asked Tony Grover, DHES, if he considered the current landfill restrictions and requirements adequate?

Grover replied, "my best feeling is that we are operating in the dark." Grover said he didn't have a "good answer" and noted that landfills are an entirely new area to many.

Paul Sihler, Environmental Quality Council, explained to the committee that HB 160 and HB 377 were two entirely different bills. HB 160, Sihler said, deals with integrated waste management, composting, waste reduction and recycling, as well as procurement policies. HB 377 deals strictly with the regulations regarding siting of a megalandfill.

Senator Hockett asked Tony Grover if six months was an adequate length of time to begin working on the siting of a megalandfill.

Grover stated it is enough time currently for someone siting an ordinary landfill. It takes approximately one year to receive a license presently, Grover said.

Senator Bianchi asked Representative Raney if models from other states were used in drafting HB 377.

Representative Raney responded that only the Montana Major Facilities Siting Act was used as a model.

Senator Bianchi asked Madler if there was a company on line interested in establishing a megalandfill in Fallon County .

Madler told the committee that the interested company had looked at HB 377 and told Madler that if the bill passed, they would not be interested in Montana as a potential site for solid waste disposal.

Bianchi asked, "what specifically couldn't they live with?"

Madler said he was told by the interested company that HB 377 was intended to prevent building of large waste disposal sites and if it was passed, they would not be interested in solid waste disposal in Montana.

Senator Doherty asked why the interested company was not at the hearing?

Madler told the committee that these company's were concerned with their public image and "weren't standing at the door waiting to get in."

Senator Doherty asked Michelle Lafurge what the estimated cost of complying with HB 377 would be.

Lafurge said she did not have those figures and did not have an estimated cost.

Senator Doherty told Rick Menger that he appreciated the fact that Menger did not want our lives to be "dictated by fanaticism" and asked him if he considered the Montana Environmental Policy Act and the Montana Major Facility Siting Act to be fanatical acts?

Menger stated that he did not consider either act to be fanatical.

Senator Doherty asked Dennis Winters what environmental groups Montana had been targeted against, as he suggested earlier in his testimony.

Winters asked if answering that question was germane to HB 377.

Senator Doherty stated he felt that it was.

Winters told Senator Doherty that environmental groups are "taking away grazing, stopping people from logging and stopping people from getting oil wells dug."

Senator Doherty asked Winters to provide him with instances where Montana has been targeted. Winters stated that he would provide the requested information.

Senator Weeding asked Joyce Almy to define "intentional roadblocks."

Almy stated that she felt the proposed fees, the two year permitting limits, and the failure of the bill to extend nd to 500,000 tons.

Closing by Sponsor:

Representative Raney told the committee that HB 377 follows existing Montana law and "was not drafted on a whim."

The bill is a technical one, Raney said, and creates mechanisms for solving problems. The bill is not a Fallon County bill but rather, a bill for Montana, Raney added. "We have a responsibility to site in the right places," Raney told the committee.

HEARING ON HB 383

Presentation and Opening Statement by Sponsor:

Representative Bob Raney, District 82, told the committee that there were presently no rules in place for storing hazardous waste. HB 383 would set up rules for storage and the Department of Health and Environmental Sciences would provide rules for the regulation of this waste, Raney said.

Proponents' Testimony:

Jim Jensen, Director of the Montana Environmental Information Center, testified in support of HB 383. Cement kilns may be the best method of destruction of hazardous waste, Jensen said.

Opponents' Testimony:

There were no opponents' to HB 383.

Questions From Committee Members:

Senator Bianchi asked Don Vidrine, DHES, if solid waste could be burned and still meet Montana's air quality standards?

Vidrine explained that air quality standards would be more stringent regarding hazardous waste.

Charles Homer, Environmental Specialist, Air Quality Bureau, Montana Department of Health and Environmental Sciences, told the committee kiln at Trident was currently in compliance with air quality standards.

Closing by Sponsor:

Representative Raney offered no further comments on HB 383.

HEARING ON HB 607

Presentation and Opening Statement by Sponsor:

Representative Raney, District 22, stated that HB 607 was the next step following HB 383 and would address laws regarding the burning of hazardous waste. Raney noted that even the strictest of the burning laws still did not apply to hazardous waste. The bill was drafted at the request of DHES, Raney said.

3-13-4

DATE _____
Natural Resources

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Bick Menger	Fallon County	377		✓
Marion Hansen	Fallon Co. Development Co.	377		✓
Kristin Page	MontPIRG	377	✓	
"	MontPIRG	858	✓	
Demetrius Almy	Fallon Co. Dev. Corp	377		✓
Michelle LeFurgey	Fallon Co.	377		✓
Nancy Schillinger	Fallon Co. Dev. Corp	377		✓
Lynnette Hintze	Richland County	377		✓
Charles Homere	MT Dept of Health	607/383	✓	
Charles Madler	Fallon County	377		✓
Tam Breitbach	NPRC	891/377	✓	
Kay Bickman	YUCC	858/891/377	✓	
Ann Vickman	MDHES	383		
Linda Lee	Montana Audubon	891/377	✓	
Linda Lee	MAudubon	858	✓	
Christine Kaufman	MEIC	858 377 891 383	✓	
Ronnie J. Hansore	MSCH	443-5341	✓	
Nancy Matheson	AERO	HB240	✓	
Brian McMillan	MEIC	858 377 891 383		

DATE 3-13-91

BILL NO. HB 377

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 13 day of March, 1991.

Name: Lynnette Hintze

Address: 123 W. Main
Sidney, MT

Telephone Number: 482-4679

Representing whom?

Greater Richland County Econ. Dev. Corp.

Appearing on which proposal?

HB 377

Do you: Support? _____ Amend? _____ Oppose? ☒

Comments:

This bill will prohibit the development of mega landfills, even though places like Fallon County have ideal sites for imported solid waste.

Please vote No on HB377 and give Eastern MT a chance to develop what it can.

ROLL CALL
Natural Resources
COMMITTEE

DATE 3-13-91

52

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Anderson	✓		
Senator Bengtson	✓		
Senator Bianchi	✓		
Senator Doherty	✓		
Senator Grosfield	✓		
Senator Hockett	✓		
Senator Keating	✓		
Senator Kennedy	✓		
Senator Tveit	✓		
Vice Chairman, Weeding	✓		
Chairman Stimatz	✓		

Each day attach to minutes.

Northern Plains Resource Council

March 13, 1990

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 4-11-91
BILL NO. HB 377

**Testimony in support of HB 377, sponsored by Rep. Raney,
"Montana Megalandfill Siting Act"**

**Submitted by Tom Breithbach on behalf of Northern Plains
Resource Council to the Senate Natural Resources
Committee**

My name is Tom Breithbach and I am here to testify in support of HB 377 on behalf of the Northern Plains Resource Council. This bill is one of the most important pieces of legislation before this legislature regarding solid waste issues in Montana. NPRC strongly supports this bill which establishes a certification and licensing process for megalandfills.

A "megalandfill" is defined as one which takes at least 200,000 tons of waste per year or 35,000 tons of incinerator ash. I might note that it is not inconceivable that a landfill in Montana will someday be that large, with the trend toward the consolidation of solid waste management throughout the state. Therefore this bill is not specifically targetted at imported waste, because Montana's landfills must also meet these requirements. The bill also, however, addresses some of the proposals for importation of waste. In my county, for example, there is talk of a huge landfill for a million tons per year of incinerator ash from Minnesota. Those types of proposals are certainly much too large to merely meet the normal permitting requirements.

A few of the important provisions of the bill include the following:

- * Applicants must identify the proposal in a long-range plan submitted to the Board of Health and Environmental Sciences (BHES) and the Dept. of Health and Environmental Sciences (DHES) at least 2 years prior to acceptance of an application by the Department. Public notice of that proposal must be given. This provision ensures that an applicant has a bona fide and well thought-out proposal.

- * In order to apply for a "certificate of site acceptability," an applicant must provide the following: summaries of studies made on the economic, social, environmental impact of the facility; a description of at least 3 alternate sites; the pros and cons of those

Miles City, Mt.
March 13, 1991

NATURAL RESOURCES COMMITTEE

SENATE NATURAL RESOURCES
EXHIBIT NO. 19
DATE 3-13-91
BILL NO. HO 377

Dear

We of the Custer Resource Alliance sincerely hope you can support House Bills, 377 and 891, pertaining to the importation o out of state garbage. We have a clean state and would like to see it stay that way.

I have been drilling water wells and test holes in South-eastern Montana for almost fifty years. The area where they are prposing to dispose of their garbage is the most fragile in the state. It is made up of variated shales and is very unconsolidated. It is not uncommon for a 200' hole to take 2000 gallons of water to drill unless you use mud. That water will wind up in the Yellowstone River. There is no other pplace for it to go.

That is what will happen to anything that leaks out of a landfill, and is has been proven they all leak.

There wouldn't be enough bond money to cover a contaminated river from which so many towns get their water.

I hope Mr. Richardson isn't claiming to represent all the people from Miles City, he does not. He is a part of the Plains and Prairie Developement Corp.

If they dump those millions of tons of garbage on Montana our kids and grandkids won't have a helluva lot to work with, will they?

Sincerely,

CUSTER RESOURCE ALLIANCE

Floyd Higgins
Miles City, Montana

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Lawrence Stimatz, on April 1, 1991, at 3:00 p.m.

ROLL CALL

Members Present:

Lawrence Stimatz, Chairman (D)
Cecil Weeding, Vice Chairman (D)
John Jr. Anderson (R)
Esther Bengtson (D)
Don Bianchi (D)
Steve Doherty (D)
Lorents Grosfield (R)
Bob Hockett (D)
Thomas Keating (R)
John Jr. Kennedy (D)

Members Excused: Larry Tveit

Staff Present: Gail Kuntz, Paul Sihlert and Deborah Schmidt (EQC).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: None.

EXECUTIVE ACTION ON HB 233

Motion:

Senator Kennedy made a motion that HB 233 BE CONCURRED IN.

Senator Doherty moved Senator Thayer's amendments to HB 233.(EXHIBIT #1).

Discussion:

Senator Grosfield told the committee that he did not understand why there was a coordinating clause between HB's 233 and 924. Grosfield stated he felt the bills "should be able to stand on their own."

EXECUTIVE ACTION ON HB 375

Motion:

Motion by Senator Keating that HB 375 BE NOT CONCURRED IN.

Discussion:

Senator Keating told the committee that if a \$250 fine didn't solve the littering problem, he didn't believe a \$500 fine would either.

Amendments, Discussion, and Votes:

None.

Recommendation and Vote:

Motion by Senator Keating that HB 375 BE NOT CONCURRED IN passed on a 6 to 5 vote with Senators Keating, Bengtson, Doherty, Weeding, Kennedy and Tveit voting in favor of the motion.

EXECUTIVE ACTION ON HB 377

Motion:

Motion by Senator Weeding that HB 377 BE CONCURRED IN.

Senator Keating made a substitute motion to amend HB 377 by deleting 200,000 tons and inserting 500,000 tons on page 2, line 15, and by deleting lines 12 and 13 on page 14. Keating said he suggested the amendments because "there is at least one landfill in the state that could get to be over 200,000 tons before too long." There are areas in the state that lend themselves to solid waste dumpsites, Keating said. Keating said he would like to refute the testimony given at the hearing on HB 377 that suggested the landfill site in Billings was "in trouble" with the EPA. "There isn't any evidence whatsoever that any leachate from the landfill is going into the Yellowstone River," said Keating.

Discussion:

Senator Hockett said he was concerned about the toxicity of incinerator ash.

Senator Weeding said that most incinerator ash would be composed of sulphur and radioactive materials. Weeding said he felt the jump from 200,000 to 500,000 tons was "a tremendous jump" and if that amount of waste would be dumped, there needed to be new siting regulations developed.

If the ash is caustic and as dangerous as some believe, it should be under a hazardous waste bill rather than a solid waste law,

Keating said.

Senator Hockett asked Tony Grover, Solid Waste Manager, Department of Health and Environmental Sciences, if the committee fly ash material is from the incineration of solid waste.

Municipal solid waste incinerator ash has been called non-toxic, no matter how toxic it is, Grover said.

Grover told the committee that consultant records demonstrate that there is leachate from the landfill in the wells in Billings. Whether or not the leachate has gone into the Yellowstone River is an unknown, he said.

Amendments, Discussion, and Votes:

Motion by Senator Keating to adopt his amendments failed with Senators Keating, Anderson and Bengtson favoring the amendment.

Paul Sihler, EQC, told the committee that the state currently generates 550 to 600,000 tons of waste yearly.

Senator Grosfield stated he felt the bill had "technical problems" and is implying "we will not have a megalandfill bill in Montana."

George Ochenski, Waste Management, Inc., told the committee that Waste Management had not taken a position on HB 377 and did not have plans to build any megalandfills within the state because "it isn't economically feasible."

Senator Bianchi asked if testimony had been submitted from the company interested in Baker, Montana.

Chairman Stimatz and secretary, Roberta Opel, stated that no additional testimony had been received.

Senator Bengtson said she felt HB 377 was sending a "tough message."

Senator Keating said that even without HB 377, the state still would have solid waste rules and regulations that continue to be more thoroughly developed. "It's possible that we could have out of state money funding our health department to develop these rules," Keating said. "By passing this bill, we begin to impact local government with horrendous fees. Think seriously about several factors within this bill, not just that it's a nice idea to keep garbage out of the state," Keating said.

Senator Weeding noted there are no fees in the current Waste Management Act.

Senator Grosfield asked Grover how much the license fees would be without this bill?

Grover replied that under SB 209, there would be a \$15,000 fee for a large landfill.

Recommendation and Vote:

Motion by Senator Weeding that HB 377 BE CONCURRED IN passed on a 6 to 5 vote with Senators Anderson, Bengtson, Grosfield, Keating and Tveit opposing the motion.

EXECUTIVE ACTION ON HB 637

Motion:

Senator Grosfield moved that HB 637 BE NOT CONCURRED IN stating that he did not feel the bill was "workable."

Discussion:

None.

Amendments, Discussion, and Votes:

None.

Recommendation and Vote:

Motion by Senator Grosfield that HB 637 BE NOT CONCURRED IN carried unanimously.

EXECUTIVE ACTION ON HB 660

Motion:

Motion by Senator Bengtson to move Senator Kennedy's amendments to HB 660.

Motion by Senator Hockett that HB 660 as amended BE CONCURRED IN.

Discussion:

None.

Amendments, Discussion, and Votes:

Motion to adopt Senator Kennedy's amendments carried unanimously.

Recommendation and Vote:

Motion by Senator Hockett that HB 660 BE CONCURRED IN carried with Senator Keating voting against the motion.

ROLL CALL
Natural Resources
COMMITTEE

DATE 4-1-91

52

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Anderson	✓		
Senator Bengtson	✓		
Senator Bianchi	✓		
Senator Doherty	✓		
Senator Grosfield	✓		
Senator Hockett	✓		
Senator Keating	✓		
Senator Kennedy	✓		
* Senator Tveit	✓	Left proxy	Vote w/ majority
Vice Chairman, Weeding	✓		
Chairman Stimatz	✓		

Each day attach to minutes.

ROLL CALL VOTE

for HB 377

SENATE COMMITTEE Natural Resources

Date 4/1/91 Bill No. HB 377 Time

NAME	YES	NO
Senator Anderson		✓
Senator Bengston		✓
Senator Bianchi	✓	
Senator Doherty	✓	
Senator Grosfield		✓
Senator Hockett	✓	
Senator Keating		✓
Senator Kennedy	✓	
Senator Tveit		✓
Senator Weeding, Vice Chairman	✓	
Senator Stimatz, Chairman	✓	

Robert G. Del Lancia Secretary
Lawrence L. Stimatz Chairman

Motion: Motion Carried 6 to 5.

ROLL CALL VOTE

SENATE COMMITTEE Natural Resources

Date 4/1/91 Bill No. HB 377 Time 5:05

NAME	YES	NO
Senator Anderson		✓
Senator Bengston		✓
Senator Bianchi	✓	
Senator Doherty	✓	
Senator Grosfield		✓
Senator Hockett	✓	
Senator Keating		✓
Senator Kennedy	✓	
Senator Tveit		✓
Senator Weeding, Vice Chairman	✓	
Senator Stimatz, Chairman	✓	

Robert B. Giel
Secretary

Chairman

Motion: _____

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 2, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 377 (third reading copy -- blue), respectfully report that House Bill No. 377 be concurred in.

Signed: *Lawrence G. Stimatz*
Lawrence G. Stimatz, Chairman

4291
Amq. Coord.

SC 4291
Sec. of Senate

FALLON COUNTY

City-County Administration Building - 10 West Fallon Avenue

P. O. Box 1134
Baker, MT 59313

Charles (Mike) Madler
County Planner/Surveyor
406-778-2883 Ext. 21

March 15, 1991

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE 4-11-91
BILL NO. HB 377

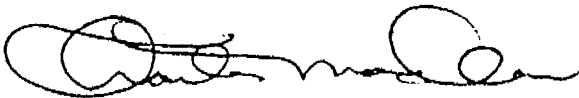
Chairman Larry Stimatz
Senate Natural Resources Committee
52nd Legislative Assembly
Helena, Montana 59601

Re: House Bill 377

Chairman Stimatz:

Attached are the most important amendments to House Bill 377, the Mega-Landfill Bill. We sincerely request your consideration of these amendments when you review the bill. Thank you.

Respectfully,



Charles Madler

encl: (9)

HOUSE BILL NO. 377

Amendments

Section 2(2)(lines 14-15) The construction of solid waste facilities that dispose of over 500,000 tons of waste a year (megalandfills)

Comments: Economical operation of a solid waste management facility, under proposed EPA guidelines forthcoming, is estimated to be 500,000 tons. Establishing a definition of "megalandfill" at 200,000 is a) intentionally prohibitive of large landfill development; b) targeted toward landfills that would accept out-of-state waste because in-state landfills are currently below this limit; and, c) presents the potential in the future for undo hardship on landfills accepting in-state waste as Montana's landfills regionalize.

Section 3. Definitions. As used in [sections 1 through 36], the following definitions apply:

Section 3(1) "Application" means an application for a license submitted in accordance with [sections 11 through 28] and the rules adopted under [sections 11 through 28].

Comments: It is unnecessarily burdensome to require both a certificate of suitability and a license since part of the licensing process is to determine site suitability. Therefore, the "certificate of suitability" references herein should be incorporated into the licensing process, rather than providing duplicative processes.

Section 3(3) STRIKE SECTION 3(3)

Section 3(4) "Commence to construct" means:

Section 3(4)a any installation of clay liner material or synthetic liner material for the specific construction of disposal cells; however, miscellaneous construction not related to direct disposal is not included in the definition of "commence to construct".

Comments: Commence to construct should provide for protection from the completion of a landfill facility in advance of permit issuance. It is standard industry practice to allow some earth removal and construction to begin, so long as such construction is protected by a bond placed by the applicant to allow the state access to funds to reclaim the site should the application be denied. To delay any construction whatsoever until completion of the permitting process places unnecessary hardship and delay on the project by extending its development period unnecessarily.

Section 3(4)b does not include modification or upgrading an existing solid waste disposal facility into a megalandfill.

Comments:

Section 3(7) "Megalandfill" [strike "FACILITY"] means any new or existing solid waste landfill that accepts more than 500,000 tons a year of solid waste [strike remainder of line 11 through line 13].

Comments: Under current (Section 3000(i)) and anticipated EPA guidelines, ash monofill is not to be hazardous waste. It is inappropriate to single out a particular waste stream when the general premise behind solid waste management regulations includes the principal that the state establishes guidelines for disposal of all waste under which specific permits are granted. Ash monofill is a subset of industrial waste and should not be singled out or treated as a particular material with specific reference

Also, the economic feasibility of ash monofill in a solid waste site is 200,000 tons. Setting a limit of 35,000 tons per year is therefore intentionally prohibitive, again, to large landfill development.

Section (9)a "Solid waste" means all putrescible and non putrescible wastes, including but not limited to garbage....[strike "inert material", line 24 and 25].

Comments: Inert material, by definition, means material that will not have an adverse impact on the environment. Because of the critical shortage of valuable landfill capacity, inert material should not be classified as solid waste that would have it utilize landfill capacity.

Section 3(9)b "Solid waste" does not mean...or marketable by-product, OR A WASTE MATERIAL THAT IS BENEFICIALLY USED, OR RECYCLED, RECLAIMED OR REUSED AS A PRODUCT OR SUBSTITUTED FOR COMMERCIALY AVAILABLE MATERIAL OR NATURAL RESOURCE.

Section 3(10) "Solid waste landfill" means any...the terms does not included land application unites, surface impoundments, injection wells, waste piles, OR HAZARDOUS WASTE UNITS.

Comments: An important inclusion to the definition.

Section 4 STRIKE "ENVIRONMENTAL FACTORS TO BE EVALUATED"

Comments: "Environmental factors" is a broad term without clear definition of its specific scope and intent that intrudes the board into technical aspects of the permitting process that are the responsibility of the Department.

Sections 6 and 7 STRIKE SECTIONS 6 AND 7

Comments: Section 6, allowing the department to contract with an applicant for information services, places the department in the role of "client" to the applicant, raising the potential for accusations of conflict of interest. As the language is now written, there is a conflict of interest on behalf of the department it is allowed to administer the rules and determine the stringency of the rules, while at the same time receiving funds from the permittee for efforts performed as a consultant in the permitting process.

It is the purpose and intent of the department to represent the interests of the people of Montana. It is therefore more fair to the applicant and to the people of Montana if all services provided by the department are included in a permit fee which would reflect the actual cost of permitting.

Section 7 is intended to allow the department to receive or charge direct charges to the applicant and thereby cover the department's expenses. Again, the department should be allowed to administer a fee which would reflect actual permitting costs.

Also, there is a separate bill currently under consideration in legislature to provide the department with adequate staff to conduct its responsibilities for current and future applicants for solid waste landfills. Having the state provide adequate support to the permitting staff and staff of experts to review the permitting process better protects the interests of the people of Montana and avoids potential accusations of conflict of interest or of unnecessary creation of delays by the department in the permitting process.

A better procedure would be the establishment of an administrative fee for the permittee to submit in support of the application process. Typically fees among other states include charges of up to \$15,000.00 for the permit application for a solid waste landfill permit. Such a fee should be substituted in place of Sections 6 and 7.

The funds are allocated in Section 8 "for use by the department in carrying out its functions and responsibilities related to solid waste management."

Section 9(1) A person may not file an application for a certificate of site acceptability required by [section 1] unless the megalandfill has been adequately identified in a long-range plan at least [~~strike 2 years~~] SIX MONTHS prior to acceptance of an application by the department.

Comments: Two years is an unacceptable condition that serves no purpose other than to delay a permitting effort and incur time-related cost expense for any applicant pursuing a landfill application.

The sole purpose of this two year delay is to provide political lead time to environmental groups in order to lobby politicians in the local area to fight permitting efforts. As we all know, most politicians on a local level require a new vote for office within a two year period.

Six months offers adequate time for the long-range plan to be submitted for public comment and review.

Also, the interests of the community are currently being protected in legislation currently before the legislature that would require a local referendum to be conducted that county citizens to require that the department halt the permitting application process. There would be every incentive for a potential applicant to have the referendum completed prior to completion of a long-range plan or submission of a permit application.

Section 9(2)b STRIKE SECTION 9(2)b

Comments: This section is redundant, since the regulations clearly spell out what land use planning agencies will be involved and what environmental concerns will be dealt with in a landfill permitting process. It is not the responsibility of the applicant to spell these out, but to conduct these investigations as required by the department and for the department to confirm, through the application process, that these consultations have taken place.

This is a condition unnecessarily burdensome since its intent, in its duplication, is to involve the applicant in the expenditure of additional time and money.

Section 9(2)c STRIKE SECTION 9(2)c

Comments: This section, again, is unnecessarily burdensome since the demand for a landfill is a given point prior to a business interest pursuing a landfill permit, and obviously justified for municipal governments pursuing permits.

The permit program should provide for environmental protection and long-term closure bonding requirements that provide environmental protection measures and financial guarantees that provide for proper closure.

Therefore, with proper environmental protection and bonding requirements, environmental risk should be adequately protected therefore making this requirement unnecessary.

Section 9(2)d additional information that the department by rule [strike: or the department on its own initiative or upon the advice of interested state agencies] requests in order to carry out the purposes of [sections 1 through 36].

Comments: Involvement of other state agencies is assumed in the duties of the department for the processing of permit applications. It is redundant and duplicative to regulate communication between departments. As to department request for information, it should be determined by rule, not caprice.

Section 9(3) revise line 3 to 5, page 8, to read:

"The plan must be furnished to the governing body of each county in which any facility included in the plan under subsection (2)a is proposed to be located and must be made available to the public by the department. The applicant shall give public notice IN THE LOCAL AREA WHERE THE FACILITY WILL BE LOCATED by publishing at least once a week for 2 consecutive weeks a summary of the proposed plan in newspapers of general circulation. [STRIKE "The plan must also be filed with...department of natural resources and conservation]. Interested persons may obtain a copy of the plan by written request and payment to the department of the costs of copying the plan."

Comments: The decision on location of a landfill should remain with the local area and county(ies) where the landfill will be located. It is an unnecessary burden to require statewide notification when the department's professional involvement is intended to enforce the law and thereby protect the health, safety and welfare of the people of Montana.

As to applicant's notification of various unrelated agencies, this is burdensome and should not be included as part of the law. Administrative laws and administrative regulations for waste management clearly states that the solid waste management and the expertise to permit landfills and this permitting effort and review process should remain with the department. It should be the department, in their professional judgement, who request the involvement and assistance of other appropriate departments and/or agencies.

To require the applicant to perform what is a department responsibility renders the applicant unnecessarily vulnerable to oversight in the notification process.

8. Section 10 STRIKE "social and economic" from line 20, page

Comments: The intent of this section is to provide the department with the authority to begin assessing the environmental effects of the landfill in the event that the long-range plan identifies construction of the landfill would begin prior to the application submission.

The issue of social and economic impacts of the facility will not affect the community in the six (6) months prior to the acceptance of an application by the department. Indeed, definition of "commence to construct" limits construction activity should protect the community by a bond placed by the applicant to allow the state access to funds to reclaim the site should the application be denied. Such a requirement would protect the community from all social and economic impact of the site prior to application.

Section 13(1)a(iii)through (vi) STRIKE Section 13(1)a(iii)through(vi)

Comments: To require an environmental impact study on "at least three reasonable alternate locations" for the megalandfill is an unnecessary burden on the applicant and should not be required. The inclusion of this requirement is a clear indication that the intent of this legislation is to unreasonably block the permitting of megalandfills in Montana.

The expertise of the department should be relied upon to evaluate the application to determine the site's conformance with state regulation. The State of Montana provides performance criteria for a landfill and if the performance standards of the state are met, then the landfill permit should be granted.

To require three alternative locations, each with an environmental impact study, is unnecessarily burdensome to the applicant and unnecessary under the regulatory requirements of Montana law.

Section 13(2) STRIKE Section 13(2)

Comments: Again, as stated in reference to Section 9(3) it is unnecessarily burdensome for applicant to notify unrelated agencies and should not be included as part of the law. It should be the department, in their professional judgement, who should decide to whom additional copies are sent for review and to which parties are involved in the review process.

Section 13(3) STRIKE Section 13(3)

Comments: It is inappropriate that public notice be filed of an applicants submission of an application. Already there is the requirement to publish a summary of the long-range plan [Section 9(3)]. And, should the referendum legislation pass legislature, this provides additional notice of intent to locate a landfill in a given area. The application procedure is inherently technical, not political, and the efficacy of the application should remain a technical consideration of the department.

It is the responsibility of the department to provide public notice to interested parties when a draft permit has been put out for public comment. This procedure should remain in place.

There is no purpose to be served in providing public notice an application has been filed when all appropriate state agency parties will be involved in the technical review related to the application process. This is clearly intended to politicize the technical process of application review and decision making, interfering with the ability of the department carry out its responsibilities. The result will be unnecessary delay and expense in the permitting process. Public notice of application, prior to the draft permit issuance should not be required.

Section 14(2) page 11, STRIKE lines 14 and 15: "...Notice of an amendment must be given as provided in [section 13(3) and (4)].

Comments: For reasons provided re:Section 13(3) and (4) above.

Section 14(2) page 11, STRIKE line 21 and 22: "additional filing FEES. (Strike at the department determines necessary or may require a new application and filing fee."

Comments: Request for a new application is a technical matter pursuant to the regulations governing approval of a landfill site and need not be duplicated by law here.

Section 15 Page 12, line 10 the word "shall" should be replaced with the word "may".

Section 15(4)a-d STRIKE

Comments: Identifying alternative methods of solid waste disposal is not the responsibility of the applicant. Since the recycling efforts of the host community are not directly related to the demands for a commercial landfill capacity, then the recycling requirements and review requirements are not appropriate for commercial landfills. Extensive opportunity and notice is being provided in this revision of the law to local areas where the burden should rest for determining the availability and desirability of alternative methods of solid waste disposal.

Section 15(5) STRIKE

Comments: The factors raised in this item are not related to the demands for commercial disposal capacity. Any permittee requesting permission to establish a commercial landfill would be prohibited from pursuing a landfill permit if these conditions were left as proposed. Again, this section is indicative of the intent of this legislation to effectively prohibit the location of a megalandfill in Montana, not to regulate their development.

Again, these provisions in Section 15(5) are duplicative of impacts included as a part of the department's review and do not need to be spelled out in a legislative act.

Section 15(6) STRIKE

Comments: The hydrogeological investigations are required as a part of solid waste regulations and will require sufficient review of these impacts by the department and other appropriate agencies it would choose to include.

Again, these provisions are duplicative of impacts included as a part of the department's review and do not need to be spelled out in a legislative act.

Section 15(7)d and e STRIKE page 15, lines 11-17

Comments: These conditions for inspection for the landfill and transportation practices, route of transportation, are not recycling for solid waste management issues. The transportation of waste is well governed by transportation standards which already apply to both rail and truck transport. Therefore, additional reference in legislative act is redundant and unwarranted.

Section 16(1)a STRIKE page 15, line 20-22: "section [strike "based upon the department's estimated costs of processing the application for certificate"]. The filing fee..."

Comments: By allowing the department to estimate cost of processing the applications certificate, the conflict of interest issue (raised above re:Sections 6 and 7) would become a major problem.

Section 16(1)a(i) revise to read, "a base fee of \$10,000.00"

Section 16(1)a(ii) 20 cents per ton for every ton over 200,000 tons capacity.

Section 16(1)b page 16, line 6, substitute "shall" for "may"

Section 16(1)b page 16, beginning line 9, STRIKE "...or required for..." through line 13, ending "...seq."

Comments: Again, as raised above re:Section ,an environmental impact statement should not be required for a solid waste management landfill application. This is an unnecessary requirement of time and expense, again intended to inhibit the industry.

Section 16(2)-(4) STRIKE page 16, line 25 through page 18, line 19

Comments: By allowing the department to enter into a contract to provide consulting services to applicant, the conflict of interest issue (raised above re:Section 6, Section 7 and Section 16(1)a) would become a major problem.

All revenues required by the department to perform its work should be derived from the filing fee and not as charges to applicant. The department, as a representative of the people of Montana, should be paid for by tax revenues and business taxes. The filing fee should remain a fixed amount, that would enable the department to carry out its responsibilities and should not be increased through charges to the applicant. This issue should be addressed in Section 1(a) exclusively.

Section 18(2) Page 18, line 17-21. Revise to read: "Upon receipt of an application [strike complying with sections 9 through 17], the department shall commence an [strike intensive study and] evaluation of the proposed megalandfill [strike and its effects], considering all applicable criteria [strike listed in section 24].

Comments: The procedure and criteria for review of applications by the department are currently set by law and need no repetition in this legislative act. Reference to the intensity of evaluation is inappropriate and duplicative to the department's handling of its technical review process. The issue of effect of the megalandfill to also covered by the department's review and duplicative here.

Section 17(3) Page 18, line 25 revise to read : "Within 120 days following acceptance of a complete..."

Comments: Given the amount of information exchange and involvement of the department prior to (through the long-range plan review) and during the process, 1 year is an excessive period for application review and response by the department. Department should have adequate staff, under proposed legislation, to respond to applicants in a timely fashion.

One year for application review is an excessive amount of time, indicative of the intent of this bill to create unnecessary delay and expense that would prohibit megalandfill development in Montana.

Section 18(2) STRIKE Page 19, line 13-15

Comments: This condition is inappropriate to void an application simply because it didn't comply with the exact form of the rules in terms of form and content. It is not substantial evidence to justify throwing out an application.

Again, this is indicative of the bill's intent to obstruct rather than regulate megalandfill development.

Section 19(1) Revise page 19, line 21-25 to read: ...shall set a date for a hearing to begin not more than 60 days after the receipt of the report. A certification hearing must be conducted by the board [strike in Helena or] in the county seat of the county in which the facility or the greatest portion of the facility is to be located.

Comments: One concern of this legislation and others before the legislature is to give communities an opportunity to respond to the presence of a landfill in their community. Holding a board meeting in Helena to review the department's report on an application does not give citizens of a county, like Fallon County, adequate opportunity to participate. Also, it would be inappropriate to hold two hearings, since all parties should benefit from all input to the Board. Therefore, all meetings of the board to review a department report on a landfill application should take place only within the county most directly affected.

Section 20(1) STRIKE page 20, line 8-9 being, "...including notice to all active parties to the original proceeding"

Comments: Again, continual notification is inappropriate to the application review process. Public notification and review should be given when hearings are held on the draft permit, and not at every point in the application process.

To continually require notification is detrimental to the technical requirements of the application review. Such notice has the primary effect of politicizing the application process, a condition which does not comply with the stated intent of this bill, that being to protect health, safety and welfare of Montana.

Section 21(5) STRIKE page 22, line 18-25, ending with "...for the hearing" and revise page 23, line 1-2, to read: "The hearing examiner may allow the introduction of new evidence prior to close of the comment period."

Comments: It is inappropriate and over burdensome for each interested party to be served with all documents that are part of public record. All documents which will be used and filed as a part of the hearing will become part of the public record and can be reviewed by any interested party. The financial consequences of having to serve each party with full copies of all documents would be prohibitive for the state and for the permit applicant. Also, by entering this requirement into law, an oversight in mailing leaves the state and the applicant open to legal action should the permit be given.

Section 21(6) STRIKE page 23, line 3-6

Comments: Discovery is allowed only during a civil proceeding during a lawsuit. It should not be allowed during the permitting process and public comment period since the environmental agencies clearly intend to take advantage of this process to delay and increase the expense of any permitting effort.

Section 21(7) STRIKE page 23, line 10-11, "These witnesses are subject to cross-examination." ADD: "Technical witnesses may be subject to cross-examination."

Comments: Cross examination of technical witnesses for both the permit applicant and the opposition is generally and should be allowed. However, the hearing officer will generally not allow cross-examination of community citizens who are non-technical and who represent personal or emotional comments.

Section 21(9) Revise line 8-9 to read: "the board, does not exceed 9 calendar months. [strike unless extended by the board for good cause]

Comments: Again, this is another means by which unnecessary delays can be allowed in the application process. Specified timelines are appropriate and beneficial in the application process.

Section 22(1)b Revise page 24, line 22-24 to read: "the chairman of county commissioners, city and/or town mayor in the county(ies) in which the facility is to be located." STRIKE page 24, line 25 and page 25, line 1-11.

Comments: Again, this is an example of unnecessary and burdensome expense to provide proper service of documents to unspecified parties. It is normal practice to have permits reviewed by local government bodies and other political entities, this condition when made part of law is burdensome. Service to the affected local government is appropriate, while notification by the department of other involved agencies should be sufficient.

Also, to single out in law any non-profit organizations identified only by general description of their activities, as apart from all interested citizens and groups, is inappropriate and burdensome. Individual citizens within such groups can request documents since all documents are a matter of public record and can be obtained at any time from the department.

Parties to whom notice and documents are to be served should be reserved, as a matter of expense and burden, to those parties a) directly involved in the process; b) identified by the department as pertinent to the review process; and, c) who specifically request the public documents be provided to them.

To unnecessarily burden the department with distribution of documents to parties not directly involved in the review process leaves the state and applicant open to legal action for failure to serve such documents.

Section 22(1)e Revise page 25, line 12-13 to read: "any other interested person who the department determines to be germane to the proceeding."

Comments: Again, this can encompass any concerned citizen having direct concern or interest in the location of a megalandfill.

Section 22(5) STRIKE page 25, line 22-25 and page 26, line 1-6.

Comments: This condition--to require in law that a local public officials deliberations on the landfill siting be published in his/her local paper--is inappropriate and is not germane to the review of an application. This condition serves no purpose other than to directly grant opponents of the landfill a platform from which to embarrass and/or intimidate local politicians.

The process of permitting a solid waste management facility is a technical decision process over which the department must rule. It is therefore extremely important that the technical experts who understand the law and understand protective measures are the primary decision makers. It cannot be decided in the political arena where politicians can be swayed by emotionalism or local politics.

No local politician should be forced by law to state their intent or have their decision not to participate subjected to public scrutiny and ridicule in their local paper.

Section 24(2)a&b STRIKE page 27, line 17-20

Comments: Again, this is assumed in the state criteria in is inappropriately duplicated here.

Section 24(2)d-g;(3) STRIKE page 28, line 5-24

Comments: These requirements have been conducted by the department in their role of protecting the public interest. It is responsibility of the department to provide the board with assurances that they have protected the health, security and welfare of the people of Montana. Let them do their job.

Section 25 Revise page 29, line 3-5 to read: "its certificate upon the modification. [strike provided that the persons residing in the area affected by the modification have been given reasonable notice of the modification]"

Comments: The board conditions must be final. Notification cannot be a condition for further delay of the permitting process.

Again, this is another indication of the intent of the legislation to prohibit not regulate megalandfill development.

Section 26 Page 29, line 6-18, replace "license" with "permit" and "licensing" with "permitting."

Section 26(2) Revise page 29, line 13 to read: "deny the permit within 10 days of the certification".

Section 27 Page 29, line 19, replace "license transferable" with "permit transferable"

Section 28(2) Revise page 30, line 4 to read "may include" not "shall include".

Section 28(2)a Revise page 30, line 7 to read "may include" not "shall include".

Section 28(2)a(i-iv) STRIKE page 30, line 9-14

Comments: As discussed re: Section 3 (10a(iii-vi)), to require an environmental impact study for a megalandfill is an unnecessary financial and procedural burden on the applicant and should not be required. The inclusion of this requirement is a clear indication that the intent of this legislation is to unreasonably block the permitting of megalandfills in Montana.

Section 28(2)b Revise page 30, line 15 to read: "a plan for monitoring groundwater effects of the".

Section 28(2)d STRIKE page 30, line 20-22

Comments: This is not required because a permit holder has a "duty to comply" built into the permit.

Section 29 STRIKE page 31, line 1-3, beginning at "and to discover and or vent noncompliance with [section 1 through 36] or certificates issued under [section 11].

Comments: This is basically unenforceable, since the department can't afford to be present at all times.

Section 30 Page 31, line 4-13 replace "certificate" with "permit"; replace "license" with "permit"

Section 30(3) STRIKE page 31, line 14-16.

Comments: Unnecessary and assumed under Montana law.

Section 31(2) STRIKE page 32, line 3-14

Comments: This provision is intended to be intimidating to public officials and is basically useful only as a means of harassment and intimidation. The rights of the individual to sue the state for lack of enforcement of its laws are currently available to all citizens and the decisions and actions of the courts need not be repeated or altered here.

Section 32 STRIKE page 32, line 15-24

Comments: Again, individual citizens have the right under existing law to seek legal remedies. It would be inappropriate to broaden or limit those legal remedies here.

Section 34 Replace "shall" with "may", throughout. Replace "license" with "permit" throughout.

Section 34(1)a Revise page 33, line 13 to read "commences [strike to construct] to operate a magalandfill without"

Comments: This is relevant to Section 3(4) "commence to construct".

Section 34(1)a Revise page 33, line 15-16 to read: "permit required under [section 26], who [strike constructs] operates [strike or maintains] a facility other than in compliance with the certificate. STRIKE balance of line 17-21. Revise line 21 to read: "is liable for a civil".

Section 34(1)b STRIKE page 33, line 23-24

Comments: This is unnecessarily punitive.

Section 34(2) Revise page 34, line 4-5 to read: "subsection (1) shall be fined not more than \$10,000.00 for a violation." STRIKE page 34, balance of line 5, line 6-7.

Comments: Civil action does not allow criminal penalties.

Section 35 Revise page 35, line 3-4 to read: " operation of the order. The court may, upon motion by the department, stay or suspend, in whole or in part, the operation"

Comments: It is the appeal is made by the department (line 2) and the court may move only on the motion of the department.

Section 35(1) Revise page 35, line 9-10 to read: "A stay may be granted with notice to the parties."

Section 35(2) STRIKE page 35, line 11-14.

FALLON COUNTY

City-County Administration Building - 10 West Fallon Avenue

P. O. Box 1134
Baker, MT 59313

Charles (Mike) Madler
County Planner/Surveyor
406-778-2883 Ext. 21

March 15, 1991

Chairman Larry Stimatz
Senate Natural Resources Committee
52nd Legislative Assembly
Helena, Montana 59601

Re: House Bill 377

Chairman Stimatz:

Attached are the most important amendments to House Bill 377, the Mega-Landfill Bill. We sincerely request your consideration of these amendments when you review the bill. Thank you.

Respectfully,



Charles Madler

encl: (9)

HOUSE BILL NO. 377

Amendments

Section 2(2)(lines 14-15) The construction of solid waste facilities that dispose of over 500,000 tons of waste a year (megalandfills)

Comments: Economical operation of a solid waste management facility, under proposed EPA guidelines forthcoming, is estimated to be 500,000 tons. Establishing a definition of "megalandfill" at 200,000 is a) intentionally prohibitive of large landfill development; b) targeted toward landfills that would accept out-of-state waste because in-state landfills are currently below this limit; and, c) presents the potential in the future for undo hardship on landfills accepting in-state waste as Montana's landfills regionalize.

Section 3(3) STRIKE SECTION 3(3)

Section 3(4) "Commence to construct" means:

Section 3(4)a any installation of clay liner material or synthetic liner material for the specific construction of disposal cells; however, miscellaneous construction not related to direct disposal is not included in the definition of "commence to construct".

Comments: Commence to construct should provide for protection from the completion of a landfill facility in advance of permit issuance. It is standard industry practice to allow some earth removal and construction to begin, so long as such construction is protected by a bond placed by the applicant to allow the state access to funds to reclaim the site should the application be denied. To delay any construction whatsoever until completion of the permitting process places unnecessary hardship and delay on the project by extending its development period unnecessarily.

Section 3(4)b does not include modification or upgrading an existing solid waste disposal facility into a megalandfill.

Comments:

Section 3(7) "Megalandfill" [strike "FACILITY"] means any new or existing solid waste landfill that accepts more than 500,000 tons a year of solid waste [strike remainder of line 11 through line 13].

Comments: Under current (Section 3000(1)) and anticipated EPA guidelines, ash monofill is not to be hazardous waste. It is inappropriate to single out a particular waste stream when the general premise behind solid waste management regulations includes the principal that the state establishes guidelines for disposal of all waste under which specific permits are granted. Ash monofill is a subset of industrial waste and should not be singled out or treated as a particular material with specific reference

Also, the economic feasibility of ash monofill in a solid waste site is 200,000 tons. Setting a limit of 35,000 tons per year is therefore intentionally prohibitive, again, to large landfill development.

Section 3(9)b "Solid waste" does not mean...or marketable by-product, OR A WASTE MATERIAL THAT IS BENEFICIALLY USED, OR RECYCLED, RECLAIMED OR REUSED AS A PRODUCT OR SUBSTITUTED FOR COMMERCIALLY AVAILABLE MATERIAL OR NATURAL RESOURCE.

Sections 6 and 7 STRIKE SECTIONS 6 AND 7

Comments: Section 6, allowing the department to contract with an applicant for information services, places the department in the role of "client" to the applicant, raising the potential for accusations of conflict of interest. As the language is now written, there is a conflict of interest on behalf of the department it is allowed to administer the rules and determine the stringency of the rules, while at the same time receiving funds from the permittee for efforts performed as a consultant in the permitting process.

It is the purpose and intent of the department to represent the interests of the people of Montana. It is therefore more fair to the applicant and to the people of Montana if all services provided by the department are included in a permit fee which would reflect the actual cost of permitting.

Section 7 is intended to allow the department to receive or charge direct charges to the applicant and thereby cover the department's expenses. Again, the department should be allowed to administer a fee which would reflect actual permitting costs.

Also, there is a separate bill currently under consideration in legislature to provide the department with adequate staff to conduct its responsibilities for current and future applicants for solid waste landfills. Having the state provide adequate support to the permitting staff and staff of experts to review the permitting process better protects the interests of the people of Montana and avoids potential accusations of conflict of interest or of unnecessary creation of delays by the department in the permitting process.

A better procedure would be the establishment of an administrative fee for the permittee to submit in support of the application process. Typically fees among other states include charges of up to \$15,000.00 for the permit application for a solid waste landfill permit. Such a fee should be substituted in place of Sections 6 and 7.

The funds are allocated in Section 8 "for use by the department in carrying out its functions and responsibilities related to solid waste management."

Section 9(1) A person may not file an application for a certificate of site acceptability required by [section 1] unless the megalandfill has been adequately identified in a long-range plan at least [strike 2 years] SIX MONTHS prior to acceptance of an application by the department.

Comments: Two years is an unacceptable condition that serves no purpose other than to delay a permitting effort and incur time-related cost expense for any applicant pursuing a landfill application.

The sole purpose of this two year delay is to provide political lead time to environmental groups in order to lobby politicians in the local area to fight permitting efforts. As we all know, most politicians on a local level require a new vote for office within a two year period.

Six months offers adequate time for the long-range plan to be submitted for public comment and review.

Also, the interests of the community are currently being protected in legislation currently before the legislature that would require a local referendum to be conducted that county citizens to require that the department halt the permitting application process. There would be every incentive for a potential applicant to have the referendum completed prior to completion of a long-range plan or submission of a permit application.

Section 9(3) revise line 3 to 5, page 8, to read:

"The plan must be furnished to the governing body of each county in which any facility included in the plan under subsection (2)a is proposed to be located and must be made available to the public by the department. The applicant shall give public notice IN THE LOCAL AREA WHERE THE FACILITY WILL BE LOCATED by publishing at least once a week for 2 consecutive weeks a summary of the proposed plan in newspapers of general circulation. [STRIKE "The plan must also be filed with...department of natural resources and conservation]. Interested persons may obtain a copy of the plan by written request and payment to the department of the costs of copying the plan."

Comments: The decision on location of a landfill should remain with the local area and county(ies) where the landfill will be located. It is an unnecessary burden to require statewide notification when the department's professional involvement is intended to enforce the law and thereby protect the health, safety and welfare of the people of Montana.

As to applicant's notification of various unrelated agencies, this is burdensome and should not be included as part of the law. Administrative laws and administrative regulations for waste management clearly states that the solid waste management and the expertise to permit landfills and this permitting effort and review process should remain with the department. It should be the department, in their professional judgement, who request the involvement and assistance of other appropriate departments and/or agencies.

To require the applicant to perform what is a department responsibility renders the applicant unnecessarily vulnerable to oversight in the notification process.

Section 13(1)a(iii)through (vi) STRIKE Section
13(1)a(iii)through(vi)

Comments: To require an environmental impact study on "at least three reasonable alternate locations" for the megalandfill is an unnecessary burden on the applicant and should not be required. The inclusion of this requirement is a clear indication that the intent of this legislation is to unreasonably block the permitting of megalandfills in Montana.

The expertise of the department should be relied upon to evaluate the application to determine the site's conformance with state regulation. The State of Montana provides performance criteria for a landfill and if the performance standards of the state are met, then the landfill permit should be granted.

To require three alternative locations, each with an environmental impact study, is unnecessarily burdensome to the applicant and unnecessary under the regulatory requirements of Montana law.

Section 15(5) STRIKE

Comments: The factors raised in this item are not related to the demands for commercial disposal capacity. Any permittee requesting permission to establish a commercial landfill would be prohibited from pursuing a landfill permit if these conditions were left as proposed. Again, this section is indicative of the intent of this legislation to effectively prohibit the location of a megalandfill in Montana, not to regulate their development.

Again, these provisions in Section 15(5) are duplicative of impacts included as a part of the department's review and do not need to be spelled out in a legislative act.

Section 16(1)a(i) revise to read, "a base fee of \$10,000.00"

Section 16(1)a(ii) 20 cents per ton for every ton over 200,000 tons capacity.

Section 16(2)-(4) STRIKE page 16, line 25 through page 18, line 19

Comments: By allowing the department to enter into a contract to provide consulting services to applicant, the conflict of interest issue (raised above re:Section 6, Section 7 and Section 16(1)a) would become a major problem.

All revenues required by the department to perform its work should be derived from the filing fee and not as charges to applicant. The department, as a representative of the people of Montana, should be paid for by tax revenues and business taxes. The filing fee should remain a fixed amount, that would enable the department to carry out its responsibilities and should not be increased through charges to the applicant. This issue should be addressed in Section 1(a) exclusively.

Section 18(2) Page 18, line 17-21. Revise to read: "Upon receipt of an application [strike complying with sections 9 through 17], the department shall commence an [strike intensive study and] evaluation of the proposed megalandfill [strike and its effects], considering all applicable criteria [strike listed in section 24].

Section 19(1) Revise page 19, line 21-25 to read: ...shall set a date for a hearing to begin not more than 60 days after the receipt of the report. A certification hearing must be conducted by the board (strike in Helena or) in the county seat of the county in which the facility or the greatest portion of the facility is to be located.

Parties to whom notice and documents are to be served should be reserved, as a matter of expense and burden, to those parties a) directly involved in the process; b) identified by the department as pertinent to the review process; and, c) who specifically request the public documents be provided to them.

To unnecessarily burden the department with distribution of documents to parties not directly involved in the review process leaves the state and applicant open to legal action for failure to serve such documents.

Section 22(5) STRIKE page 25, line 22-25 and page 26, line 1-6.

Comments: This condition--to require in law that a local public officials deliberations on the landfill siting be published in his/her local paper--is inappropriate and is not germane to the review of an application. This condition serves no purpose other than to directly grant opponents of the landfill a platform from which to embarrass and/or intimidate local politicians.

The process of permitting a solid waste management facility is a technical decision process over which the department must rule. It is therefore extremely important that the technical experts who understand the law and understand protective measures are the primary decision makers. It cannot be decided in the political arena where politicians can be swayed by emotionalism or local politics.

No local politician should be forced by law to state their intent or have their decision not to participate subjected to public scrutiny and ridicule in their local paper.

Replace "SHALL" with "MAY"; replace "LICENSE" with "PERMIT"; and replace "LICENSING" with "PERMITING" throughout the bill

Section 22(1)b Revise page 24, line 22-24 to read: "the chairman of county commissioners, city and/or town mayor in the county(ies) in which the facility is to be located." STRIKE page 24, line 25 and page 25, line 1-11.

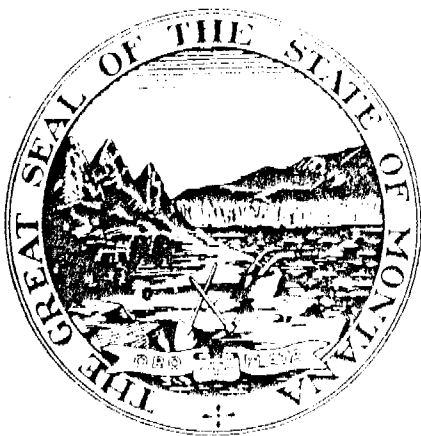
Comments: Again, this is an example of unnecessary and burdensome expense to provide proper service of documents to unspecified parties. It is normal practice to have permits reviewed by local government bodies and other political entities, this condition when made part of law is burdensome. Service to the affected local government is appropriate, while notification by the department of other involved agencies should be sufficient.

Also, to single out in law any non-profit organizations identified only by general description of their activities, as apart from all interested citizens and groups, is inappropriate and burdensome. Individual citizens within such groups can request documents since all documents are a matter of public record and can be obtained at any time from the department.

Parties to whom notice and documents are to be served should be reserved, as a matter of expense and burden, to those parties a) directly involved in the process; b) identified by the department as pertinent to the review process; and, c) who specifically request the public documents be provided to them.

To unnecessarily burden the department with distribution of documents to parties not directly involved in the review process leaves the state and applicant open to legal action for failure to serve such documents.

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SENATE NATURAL RESOURCES

EXHIBIT NO.

3

DATE

3-13-91

BILL NO.

HB 377

\$10.00

GEOLOGY OF THE BAKER
AND WIBAUX 30X60-MINUTE
QUADRANGLES,
EASTERN MONTANA AND
ADJACENT NORTH DAKOTA

by

Susan M. Vuke-Foster, Roger B. Colton,
Michael C. Stickney, Edith M. Wilde,
J. Elise Robocker and Kim C. Christensen



Cedar Creek anticline.

Prepared in cooperation with the U.S. Geological Survey.

Geologic Map 41

1986



Montana Bureau of Mines and Geology

A Department of

Montana College of Mineral Science and Technology

FALLON COUNTY

City-County Administration Building - 10 West Fallon Avenue

P. O. Box 1134
Baker, MT 59313

April 3, 1991

Charles (Mike) Madler
County Planner/Surveyor
406-778-2883 Ext. 21

Sen. Lawrence G. Stimatz, Chairman
Senate Natural Resources Committee
52nd Legislative Assembly
Capitol Station
Helena, MT. 59620

SENATE NATURAL RESOURCES
COMMITTEE (Submitted 4-18-91)
DATE 3-13-91
BILL NO. HB 377

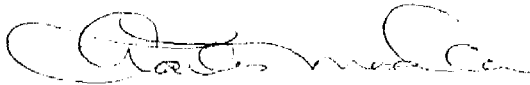
Re: House Bill 377 - Mega-Landfill Bill

Sen. Stimatz:

During the Senate Committee hearing a committee member asked how we determined the need for amendments. We are not experts on solid waste legislation so we asked an expert from a solid waste engineering firm. The engineer has worked with solid waste companies in siting and licensing facilities and has a great deal of experience with legislation over the entire United States. He reviewed the proposed bill and sent his comments on the condition that his company remain anonymous. I am enclosing a copy of these comments as per the committee request. All reference to the engineering firm has been deleted, however this does not detract from the comments. I hope that it will be useful to you in considering our proposed amendments.

Thank you for your time and consideration.

Sincerely,



Charles Madler

FACSIMILE TRANSMITTAL

SENATE NATURAL RESOURCES

EXHIBIT NO.

(submitted 4-15-91)

DATE

3-13-91

BILL NO.

HB 377

TO:

Mike Madler

FROM:



DATE:

3-8-91

RE:

Bill 377

NUMBER OF PAGES TO FOLLOW: 16

COMMENTS/INSTRUCTIONS:

Mike,

This is a rough, rough, rough draft

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Comments in Response to House Bill Number 377 in the 52nd
Legislature of the State of Montana

Within the Bill supplied by the environmental quality council which is a environmental group dedicated to stopping the permitting and construction of landfills or making the process financially burdensome that it essentially is promulgated of landfill permits of the type named in this Act. The purpose of the Bill is stated that it will establish a certification and licensing perceive process for mega landfill, provide contracts for information, require submission of long-range plans, require certificate of site acceptability, request environmental factor to be evaluated, provide constant hearing processes, provide for enforcement by residence, provide a mechanism to recover damages for contamination of drinking water supplies and provide for an immediate effective date.

This particular Bill seeks to detail and establish timeline that will drag out a permitting process to an extended period of time that will seek or provide an defacto prohibition on permitting. All of the established purposes that are described in the definition are currently in place under the Montana State laws and are part of the existing permitting process for the State Department of Health. As an example, the existing permitting process and permit review procedures that would be utilized by the appropriate permitting agency within the State of Montana currently allows a review of site excitability, a review

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of long-range plans and a review of pertinent environmental factors prior to the agency issuing a draft permit.

This Bill essentially acts to circumvent the existing authority which the agency now controls. The primary purpose of this proposed House Bill 377 would be to take the control of the permitting process out of the hands of the responsible agency who acts on behalf of the people of Montana and to place the decision process in the hands of environmental groups who would be advisories to the group. The existing the courts and legal systems in the State of Montana clearly provides avenues of recourse for any damages that may result from contamination of a drinking water supply. This Bill does not need to spell out a specific mechanism that would be contradictory to or redundant with the existing judicial system within the State of Montana. The existing legal system for issuing permits also has a provision for judicial review and provides for penalties for violation and therefore does not need a redundant system as contained in this House Bill.

Within the Statement of Intent contained within this House Bill it states that the regulations are designed to protect public health safety and welfare and the environment. While the protection of health safety and welfare is the umbrella or shield under which these regulations and laws would be reenacted, it is very clear from the content of this Bill that the details requested in the timelines applied are delayed tactics associated

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with permitting facilities as opposed to actual health and safe protective measures. Anyone in the waste management industry including municipalities, private industry or State and Federal agencies would be opposed to the unnecessary written into this program and various requirements that are financially over burdensome without adequate return on investment in terms of providing health safety and welfare. It is obvious that the shield of protection of public health and safety has been abuse by the underlying purpose of the proposed Bill.

Under Section 3/Definitions the definition of commence to construct is defined as any clearing of land, excavation, construction or other action that would effect the environment the site. This Section 4A should be revised to state that commence to construct means; A) any installation of clay liner material or synthetic liner material for the specific construction of disposal cells however, miscellaneous construction not related to direct disposal is not included in the definition of commence to construct. Subsection B under Section 4B states that commence to construct also includes modification or upgrade any existing facilities in to a mega landfill classification. This Section 4B should be revised to state that commence to construct means; A) same as above B) does not include the modification or upgrading an existing solid waste disposal facility into a mega landfill. Under Section 3-7 the definition of mega landfill or facility is established to include facilities that except more than 200,000 tons of waste per year

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or any ash monofill that excepts 35,000 tons a year or more of solid waste incinerator ash. This Section should be revised to state that a mega landfill strike the words facility means any new solid waste landfill facility that excepts more than 500,000 tons per year but does not include industrial landfills nor ash monofills permitted under the industrial waste section. The existing language under Section 3-7 specifically points out or aims at ash monofills and is inappropriate to single out a particular waste stream when the general premise behind solid waste management regulations includes the principal that the state establishes guidelines for disposal of all waste under which specific permits are granted. Ash is a subset of industrial waste and should not be singled out or treated as a particular material with specific reference. Under Section 3-9A solid waste is defined to include all protrusible and non-protrusible waste including inert material. The reference inert materials should be taken out since a material that is inert should not be classified as a solid waste and could be more effectively managed outside the confines of a waste management landfill. Because of the critical shortage of suitable landfill capacity it does not warrant utilizing valuable landfill capacity for material which are inert. By definition inert means the material will not have an adverse impact on the environment therefore management should not be required for a waste landfill.

Under Section 3-9B solid waste is defined not to include various materials and at the end of that section the following

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should be added; "for solid waste does not mean ...or marketable by-product, or a waste material that is beneficially used, or recycled, reclaimed or reused as a product or substituted for commercially available material or natural resources". That section should be added to the end of Section 3-9B.

Section 3-10 under the definition of solid waste landfill includes landfills public and private and "other types of waste" but this section does not exclude hazardous disposal units. To correct this oversight, the last sentence of the Subparagraph 10 should read "the term does not include land application units, surface impoundments, injection wells, waste piles, or hazardous waste units.

Section 4 in line 17 the words environmental factors to be evaluated should be struck and removed. Under Section 6 line 8 and 9 on page 6 payments to the department under a contract must be credited under the fee payable under Section 16. This section requires for a proposed business which wishes to come in to the State of Montana to pay an up front fee for the processing of application information. This type of treatment of new business enterprise does not conform of the normal method of treatment of businesses which bring jobs, taxes and development to an area. Since the economic development associated with a private landfill operation will be assessed various fees during an operating life then the up front fees for licensing and permitting should be charged against the state budget and recovered through future

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taxes on future facilities as opposed to being up front payments prior to the location of the business interest.

With this principal in mind Section 6 should be removed completely. Section 7 has been placed in this Bill in order to allow the Agency to receive or charge direct charges to the permittee and cover the agencies expenses. This section should be revised or taken out since the agency should be allowed to administer a permit fee which would reflect a actual cost of permitting and should not be allowed to be a general consultant in the review process. The tax payers and business interest of the State and any business that would come into the State will share in the tax burden that supports the permitting staff and staff of experts whom will review the permitting processes.

It is inappropriate for the agency to place itself in competition with private industry as part of the consulting efforts related to permitting solid waste management facilities. Under the guidelines of this Bill there is a conflict of interest on behalf of the state agency if it is allowed to administer the rules and determine the stringency of the rules and application and at the same time receive funds from the permittee for efforts performed as a consultant in the permitting process. With this scenario the agency can require additional information or additional studies as a permit administrator and turnaround and collect additional funds as a result of this decision for continuing its permits efforts. This conflict of interest should

not be allowed a part of a state agency or legislative act.

While the premise that the permittee has requested administrative action in order to review an application process should bear some of the expenses in reviewing the application it is a conflict of interest and self serving for the agency to be able to build a kingdom of staff by constantly by making the permitting process more difficult and stretching it out for a longer terms of time just to gain more revenue to support its growing staff. The alternative to Section's 7 and 8 of the proposed Bill would be to establish an administrative fee for the permittee to submit in support of the application process. Typically fees among other states include charges of up to \$10,000 to \$15,000 for the permit application for a solid waste landfill permit. These fees are industry wide and acceptable and should be substituted in place of Section 7 and 8.

Section 9 requires that a person cannot file an application for site suitability unless the landfill has been identified in a two year long-range planning state. This condition is unacceptable and serves no purpose other than to delay a permitting effort and incur a time related cost expenses for any applicant who is pursuing a landfill application. The soil purpose of this two year delay is a strategic effort by the environmental groups to be put on prior notice at least 2 years in advance of a landfill in order to try to lobby politicians in the local area to fight any permitting efforts. By having the 2 year advance the environmental groups are clearly aware that any

prior to close of comment. Page 23, lines 3, 4, 5 and 6 should be stricken completely since discovery should only be allowed during a civil proceeding during a lawsuit. Discovery should not be allowed during the permitting process and public comment period since the environmental agencies clearly intend to take advantage of this process to delay and increase the expenses of any permitting effort.

Section 21, page 23, line 10 and 11, this section allows witnesses to be cross examined during the hearing process. This statement should be revised since during most hearing processes the hearing officer will not allow cross examination of the community citizens who are non-technical and who represent emotional comments. Cross examination of technical witnesses both for the permittee and the opposition should be allowed however cross examination of community residence is usually not allowed.

Page 24, line 28, the number 9 should be marked out and number 6 should be inserted so that the sentence reads "the Board, does not exceed six calender months". And the remainder of the sentence should be struck. Strike the words unless extended by the Board for cause.

Page 24, line 22, the environmental group has sought to allow all political entities and local government agencies to be an interval part of the process realizing that the political

allowed unrestrictive access to continuing fees on a permit request.

Page 18, lines 17, 18, and 19 should read as follows: upon receipt of an application the department shall commence and evaluate the proposed facilities considering all applicable criteria. Page 18, item 25 should read; within a 120 days following exceptions. ...6 and 18 page 19, lines 13,14 and 15 should be struck, this condition is inappropriate to void an application simply because it didn't comply with the exact form of the rules in terms of form and content. This small type of nonconformance is not substantial evidence to throw out an application. Page 20, line 8 and 9 strike the words including notice to all active parties to the original proceeding. Page 20, line 12, strike the words social and economic impacts. Page 20, lines 15, 16, 17, 18, 19 and 20 should be struck. Line 21 and 22 should read; after the hearing the board shall grant deny or modify the amendment within 30 days. Page 22, lines 18 through 25 should be stricken. It is completely inappropriate and over burdensome for each interested party to be served with all documents that are part of public record. All documents which will be used and filed as part of the hearing will become part of the public record and can be reviewed by any interested party. The financial consequence of having to serve each party with full copies of all documents would be prohibitive for both the state and any permit applicant. Page 23, lines 1 and 2 should be revised to state that introduction of new evidence

interest will become a major problem. Page 16, line 3, should read; a base fee of \$10,000.00 plus \$0.20 per ton for every ton over 200,000 tons capacity. Page 16, line 6, should read as follows; the department shall allow... . This change substitutes the word shall for the word may in this sentence. Page 16, lines 9, 10 11, 12 should be taken out since an environmental impact statement should not be required for a solid waste management landfill application. Page 16, lines 13 through 24 should be removed, since they are to open ended and allow the state to much discretionary control over the funding mechanism. Page 16, line 25, and all provision related to the ability of the state to contract for providing a consulting services should be removed, since there is a conflict of interest among this regulation and legislative requirement and there is a conflict of interest with the private interest who supply consulting services for landfill design and permitting. Page 17, line 7, 8. and 9 the sentence that requires that the revenue derive from the filing fee must be sufficient to enable the department to carry out there responsibilities should be stricken and the following statement should be implemented: the revenue from the filing fee is limited to the \$10,000.00 fee and shall not be increased by the board or the department as charges to the applicant. Page 17 lines 9, 10, 11, and 12 should be stricken completely, the department should not be allowed to request additional payment from the applicant since the department is paid for by tax revenues and business taxes and will be self serving if it is

beginning on line 8 all factors related to this item should be removed since these factors are not related to the demands for commercial disposal capacity and any permittee requesting permission to establish a commercial landfill would be prohibited from pursuing a landfill permit if these conditions were left in place as proposed. Page 14, capital M, this section requires impacts on local government infrastructure and existing industry. These particular impacts are assessed by the solid waste management agency as part of there review, these conditions do not need to be spelled out as part of a legislative act. The hydrogeological investigations which are required as part of the solid waste regulations will require sufficient review of these impacts. These specific impact of a facility solid waste management facility should not be subject to review since commercial facilities will be governed by the availability of the resources to support the landfill activity. Page 15, lines 11 through 16 should be stricken. These conditions for inspection for the facility and transportation practices, route of transportation are not recycling for solid waste management issues. The transportation of waste is well governed by transportation standards which already apply to both rail and truck transport and therefore additional regulation is redundant and unwarranted. Page 15, Section 16, lines 20, 21 and 22 should be revised to state the following; the applicant should pay to the department a filing fee as provided in this section in the amount of \$10,000.00. By allowing the department to estimate cost of processing the applications certificate the conflict of

United States requires that the administering agency provide public notice to all interested parties when a draft permit has been put out for public comment. This same procedure should apply now. There is no purpose served in providing public notice in application has been filed when all interested state agency parties will involved in the technical review related to the application process. Public notice prior to the draft permit issuance should not be required.

Section 14, page 11, lines 14 and 15, the last sentence should be stricken from the document. Under page 11, lines 21 and 22, the sentence should end with the word fees, and the last portion of 21 and 22 should be removed. Page 12, lines 3, 4, 5 and 6, the last sentence of this group should be stricken completely. Page 12, line 10, the word shall should be replaced with the word may. Page 12, lines 21 and 22 should be stricken completely. Page 12, lines 23 and 24 should be removed. Page 12 last line and page 13 first line should be stricken. Page 13, lines 2, 3 and 4 should be removed. Page 13, subitem D, should be removed since the decision process to pursue a large landfill as a business opportunity should not be required to undergo an evaluation for waste reduction methods within the areas where solid waste will be removed and secured for disposal within the landfill. Since the reclined efforts of the host community are not directly related for the demands for a commercial landfill capacity then the recycling requirements and review requirements are not appropriate for commercial landfills. Page 13, item 5,

Section 13 conditions little 2, 3, 4, 5 and 6 should be removed as they relate to environmental impact statements and studies. To require an environmental impact study on the facility and at least 3 reasonable alternate locations is unnecessary burden on the permittee and should not be required. The expertise of the solid waste management agency should be relied upon to evaluate the application to determine its conformance with the regulations. If the performance standards of a regulatory program are met then the facility permit should be granted. An environmental impact statement of comparative facility locations should not be a factor in the permitting of an individual site. The solid waste management velocity and premise of the laws and regulations of the State of Montana provide for a set of rules that establish the performance criteria for facility to operate under and these should be the limiting criteria for a facility. Page 10, line 10 under Section 13B require that copies that any studies should be filed with the department and under Subsection 2 various other parties are listed for copies with. This condition should be removed it should be sufficient for the applicant to file the application with the appropriate solid waste management agency of the state and the solid waste management agency shall decide to whom additional copies are sent for review and to which parties are involved in the review process.

Section 13, page 11, lines 3 through 9 should be stricken. The application process normally used by states throughout the

Section 9-2D should be revised to state that additional information that the department by rule request in order to carry out the purpose of this act.

Section 9-3 should be revised to remove the second sentence which states that the applicant shall give public notice throughout the state of publishing once a week in two consecutive weeks public notice so on. This statement should be revised to state that the public notice would be required in the local area newspaper where the facility will be located.

Section 9-3 requires various unrelated agencies to receive copies of the plan, this administrative requirement is burdensome and should not be included as part of the law. The administrative laws and administrative regulations for waste management clearly states that the solid waste management and the expertise to permit landfills and this permitting effort and review process should remain with the solid waste agency instead of being deluded to various other agencies.

Section 10, page 8, line 17, the word shall should be replaced with the word may so that partial statement reads as follows; "the department may begin to examine..." Section 10 line 20 should have the words social and economic stricken from the sentence.

politicians in a local level will require at least a new vote for office for a 2 year period.

Section 9-2A & B requires the permittee to submit informational support for such things as the environmental groups that will be involved in permitting process. This statement requirement is a redundant effort since the regulations clearly spell out what land use planning agencies will be involved and what environmental concerns will dealt with in a landfill permitting process.

Section 9-2C requires the permittee to give explanation of the basis for justifying the landfill demand and describe the extent to which facilities will meet the demand. This condition is unnecessarily burdensome since the demand for a landfill is a given point prior to a business interest pursuing a landfill permit and for municipal governments that pursue permits, the demand is obviously justified. Also it is important to note that, even if a landfill is permitted under a permit program which provides environmental protection and long-term closure bonding requirements than even if the demand for the facility is not there the environmental protection measures will still be in place and the financial guarantees will be in place to provide proper closure. Therefore, there is no environmental risk of permitting a facility and then finding out the demand is not there to support the facility, therefore, this requirement is unnecessary and does not need to be in place.

nature of a permit process almost guaranties that a permit will not be issued without substantial delay. In order to enhance the permitting process this condition should not be included in the act and the responsible parties who have an interest in the act and the responsible parties who have an interest to a permitting process should include the permittee, the agency responsible for carrying out the solid waste management laws and the regulations of the state and the parties that the agency deems to have a vested interest. Since environmental permits for solid waste management facilities are always reviewed by parties including local government bodies and other political entities this condition should not be part of the law even though normal practice is to include these parties without service of documents and the burdensome expense of proper service. To correct this Section, lines 22, 23, 24, and 25 should be stricken. On page 25, line 1 through 11 should be removed since non-profit organizations would be represented by the citizens who are in that community.

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